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THE

Law and Modern Practice

OF

EJECTMENTS:

WITH

The LATEST DETERMINATIONS both in K. B. and C. B.

SELECT PRECEDENTS;

AND

Three distinct TABLES to the Whole.

By a GENTLEMAN of the INNER TEMPLE.

LONDON:

PRINTED BY HIS MAJESTY'S LAW-PRINTERS,

For E. BROOKE, in *Bell-Yard*, near *Temple-Bar*.

MDCCLXXIX.

MVSEVM
BRITANNICVM

THE

PREFACE.

THERE is certainly no Title in the Law of which the Knowledge is more generally uſeful than that of Ejectments to every Branch of the Profeſſion.—To them, therefore, a compendious Treatiſe on the Subject cannot, it is preſumed, fail of recommending itſelf. It has at leaſt this Advantage, that it exhibits in one Volume the Subſtance of what is diſperſed in many, and affords at one View every Thing extant on the Subject.

The Book which bears this Title, under the celebrated Name of Lord Chief Baron *Gilbert*, has evidently ſhared the Fate of many other Works attributed to his Lordſhip, and been

uſhered into the World without any of thoſe Advantages which would have been the Reſult of a Reviſion. Beſides, that Book muſt neceſſarily be *now* more defective, as wanting the later Determinations which are *here* added, with ſuch Alterations as have *ſince* taken Place *in the Practice*.

All the Caſes in the Books are carefully arranged under their reſpective Chapters, with three diſtinct Tables to the whole, *viz.* a Table of the Caſes cited, a Table to the Precedents, and another to the Special Matter.

June 20, 1779.

CON-

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Ejectments.

CHAP. I.

Ejectment defined.

AN *Ejectment* is an action brought by leſſee of a term of years, to recover ſuch term. An ejectment is an ingenious fiction for the trial of titles to the poſſeſſion of land. *In form*, it is a trick between two to diſpoſſeſs a third by a ſham ſuit and judgment. The artifice would be criminal, unleſs the court converted it into a fair trial with the proper party. The controul which the court has over the judgment againſt the caſual ejector, enables them to impoſe any terms on the plaintiff that are fair and juſt. He was ſoon ordered to give notice to the tenant in poſſeſſion. When the tenant in poſſeſſion aſked to be admitted defendant, the court was enabled to make conditions, and therefore obliged him to allow the

fiction of leaſe, entry, and ouſter, and to go to trial on the real merits of the caſe, if the leſſee was merely tenant at will, he was bound to give notice to his landlord.

The ſame reaſon of a fair trial with the proper party, required the landlord to be admitted defendant with the tenant, or without him, if, contrary to the duty of his relation, he ſhould betray the cauſe.

And there can be no ground for admitting the landlord to be a co-defendant which does not hold to his defending alone in caſe the other abandons.

Fairclaim v. Sham Title, Burr. Rep.

The plaintiff ought not to recover without a trial with the perſon intereſted in the queſtion and affected by the judgment.

An ejectment is a poſſeſſory action, in which almoſt all titles to lands are tried, whether the party's title is to an eſtate in fee, fee tail, for life or years, the remedy is by one and the ſame action.

1 Burr 99.

In an action of ejectment, the plaintiff recovers only the poſſeſſion of the land, and

and the execution is of the poſſeſſion only. By the ejectment, the poſſeſſion and the title unite; for the law does no wrong, and will not let any one get poſſeſſion without a title.

An ejectment is a poſſeſſory remedy, and only competent where the leſſor of the plaintiff may enter. Therefore it is always neceſſary for the plaintiff to ſhew, that this leſſor had a right to enter by proving a poſſeſſion within twenty years, or accounting for the want of it under ſome of the exceptions allowed by *ſtat.* 21 *Jac.* 1.

Every plaintiff in ejectment muſt ſhew a right of poſſeſſion, as well as of property; and therefore, the defendant needs not plead the *ſtat.* as in caſes of actions. 1 Bur. 119.

The queſtion in ejectments always is, whether the leſſor could then make the leaſe, and he is nonſuited if lays the demiſe before his title accrued. Strange 1086.

Confeſſion of Leaſe, Entry, and Ouſter.

The reaſon of confeſſing leaſe, entry, and ouſter, is, to bring the matter to the mere queſtion of the plaintiff's poſſeſſory title.

3 Burr. 1895. In the caſe of *Dormer* and *Forteſcue*, 11 *Geo.* 2. in *B. R.* an actual entry was holden neceſſary on *ſtat.* 21 *Jac.* 1. *c.* 16. for that the word action in that ſtatute, could not mean ejectment. That was ſettled and eſtabliſhed by many caſes. Therefore to avoid a fine, there muſt be an actual entry, and the demiſe cannot be laid before the actual entry. In all other caſes, the confeſſion of leaſe, *&c.* is ſufficient; and ſo it is now ſettled, that it is ſufficient for an ejectment brought on a condition broken.

CHAP. II.

Of the Nature of the Action, and the antient Manner of proceeding in Ejectment.

F. N. B. 220. THIS Remedy was invented to ſupply the defects which attended the bringing of real actions, by which the party

party could not recover damages, nor regularly bring a ſecond action if he was barred in his firſt. To prevent the demandant's being concluded by one action, the manner of forming a term for years, and the leſſees bringing an ejectment, and thereby to aſſert the title of the plaintiff was found out, and was firſt introduced in the 14 *H.* 7. before which time leaſes for years were but of ſhort continuance, and were beſides ſuch precarious poſſeſſions, with reſpect to the power that the owner of the freehold had over them, that every ſuch leſſee was looked upon only as his bailiff, and, if ouſted, could only have recovered damages for the loſs of his poſſeſſion, and, if ouſted by his leſſor, he could only ſeek a remedy from his covenants.

Long terms were formerly in uſe, and leſſees, to ſecure themſelves, uſed to go into equity againſt the leſſors for a ſpecific performance, and againſt ſtrangers, to have perpetual injunctions, to quiet their poſſeſſions, which throwing the material buſineſs into Chancery, the courts of Common Law gave the writ of *habere facias poſſeſſionem* for the recovery of lands.

Bacon's Abridgement, tit. (Ejectment) Vol. 2. 160.

This being a new mode of trial, the party who had a right of entry on lands, uſually ſealed leaſes * of ejectment on the lands, and then, any perſon, that next entered on the freehold, became an ejector. A rule was afterwards made, that the plaintiff ſhould not proceed in ejectment againſt ſuch a feigned ejector without delivering a declaration to the tenant in poſſeſſion, and making him an ejector and proper defendant (if he pleaſed.) This was neceſſary to prevent injuries to third perſons. *F. N. B.* 489. *Vide ante, p.* 1.

By the antient practice, ſuch leaſes were actually to be ſealed and delivered; becauſe otherwiſe the plaintiff could maintain no title to the term, and were alſo obliged to be ſealed on the land itſelf, becauſe it was an offence which the law calls maintenance, to convey out of poſſeſſion; and this antient method of pro-

---

* Leaſe by *copyholder* for more than one year, without licence or cuſtom, is not good, to try a title in ejectment; but he will be nonſuited on his own evidence, and ſuch leſſor will be taken to be a diſſeiſor. *Per tot. cur. Brownl.* 133. *Paſch.* 8 *Jac. Cramphorn and Freſhwater.*

ceeding

ceeding is ſtill neceſſary in many caſes. *See vacant poſſeſſion*, cap. 12.

CHAP. III.

Of the Modern Form of commencing and proceeding in Ejectment.

THE modern method entirely depends upon a ſtring of legal fictions. No actual leaſe is made, no actual entry by the plaintiff, no actual ouſter * by the defendant; but all are merely ideal, for the purpoſe of trying the title. To this end,

Modern Method. See Judge Blackſtone's Comments, Octavo, vol. 3. p. 201.

* If defendant will not appear and confeſs leaſe, entry, and ouſter, the courſe is, to call him and his attorney, if he be within the rule, and then to call plaintiff himſelf, and nonſuit him; and then, on return of the *poſtea*, judgment will be given againſt the caſual ejector, and the Maſter will tax coſts, upon the rule for confeſſing leaſe, entry, and ouſter, and if they are demanded of defendant and not paid, the court, on affidavit, will grant an attachment. 1 *Salk.* 259. *pl.* 14. *Trin.* 2 *Ann. B. R. Turner and Burnaby.* In caſe of tenant in common, there muſt be an actual ouſter of one by the other, or elſe he ſhall not be compelled to confeſs leaſe, entry, and ouſter. *Per Holt* 7 *Mod.* 39. *T.* 1 *Ann. B. R. anon.*

in the proceedings, a leaſe † for a term of years, is ſtated to have been made by him

---

† If the leaſe is defective, the court can give no judgment; and the rule of court does not bind the defendant to confeſs the leaſe otherwiſe than it is made. *Per Rol. C. J. Sty.* 343.

In ejectment, the leſſor of the plaintiff had title to enter for a *condition broken for nonpayment of rent*, leaſe, entry and ouſter, was confeſſed, and the court was moved, that in regard the leſſor had ſuch a ſpecial title, and no eſtate until entry; whether *ſuch* an entry ſhould be *ſupplyed by the general confeſſion*, or that there ſhould be an actual entry, and held, that it ſhould be ſupplyed by the general confeſſion. *Vent.* 248. *Mich.* 25 *Car.* 2. *B. R. Anon.*

Where there are divers defendants, who are to confeſs leaſe, entry, and ouſter, if every one of them do not appear at the trial, plaintiff cannot proceed againſt the reſt, but muſt be nonſuit. *Ventr.* 355. *Trin.* 33 *Car.* 2. *B. R.*

Where an entry is required, and even neceſſary, the confeſſion of leaſe, entry, and ouſter, does *ſupply* it, (tho' no actual entry.) *Per Scrogs C. J.* 2 *Show.* 207. *pl.* 204. *Paſch.* 35 *Car.* 2. *Hono and Gale.*

N. B. In ejectment, if defendant *has not regular notice* of *trial*, the way is not to confeſs leaſe, entry, and ouſter, but to oppoſe judgment againſt the caſual ejector. 7 *Mod.* 118. *Mich.* 1 *Ann. B. R. Anon.*

who

who claims title, to the plaintiff, (who brings the action.) It is alſo ſtated, that the leſſee entred, and that the defendant (who is called the caſual ejector) ouſted him, for which ouſter he brings this action. The action brought, and the complaint being fully ſtated in the declaration, the caſual ejector or defendant ſends a written notice to the tenant in poſſeſſion of the lands, informing him of the action brought, and tranſmitting him a copy of the declaration, aſſuring him, that he (the defendant) has no title to the premiſes, and ſhall not, therefore, make any defence; adviſing the tenant to appear in court, and defend his own title; otherwiſe, that he, (the caſual ejector) will ſuffer judgment to be had againſt him, and the actual tenant will thereby inevitably be turned out of poſſeſſion; on receipt of which, if the tenant in poſſeſſion does not, within a limited time, apply to the court to be admitted a defendant, he is ſuppoſed to have no right, and, upon judgment againſt the caſual ejector, the real tenant will be turned out of poſſeſſion by the ſheriff.

CHAP.

CHAP. IV.

What Eſtate will maintain an Ejectment, and for what an Ejectment lies.

1 Lev. 170. Lilly's P. R. cont. 381. Salk. 259.

A Rent granted with a proviſo, that if it be not paid, that he may enter and retain the land, *quouſque*, *&c.* The grantee has here ſuch an eſtate as will maintain an ejectment.

Co. Lit. 211. Sty. Reg. 399.

But accepting of rent, is diſpenſing with all forfeitures or right of entry, for any thing that happened before that rent became due. So ruled by C. Baron *Parker*, *Norfolk aſſizes* 1753.

Timmins v. Rawlinſon, 3 Burr.

Demiſes (where no certain term is mentioned) are held to be tenancies from year to year, and neither landlord nor tenant can determine the tenancy without reaſonable notice, which in moſt counties is ſix months preceding *Michaelmas*, or that part of the year when the tenancy commenced. *Black. Comm.*

At the end of the ſix months notice, the landlord's title accrues, and he may then

then bring his ejectment, and the acceptance of rent for a quarter ſucceeding; the demiſe laid in the declaration is no bar to the ejectment, though it would be to an action for the uſe and occupation.

Whenever half a year's rent is in arrear, and the landlord has a right to enter for the nonpayment thereof, he may, without any demand or re-entry, bring an ejectment. 4 *Geo.* 2. Doe on demiſe of Hill v. Parks, Trin. 1775.

But where the ejectment is brought merely for the nonpayment of rent, the proceedings may be ſtayed, on the tenant's tendering to the landlord, or paying into court, all arrears of rent, with coſts, at any time before the trial.

After the expiration of a leaſe, the tenant is a treſpaſſer, and therefore an ejectment (which is an action of treſpaſs) may be brought at the expiration of a leaſe, without any notice to quit. *Bury Aſſizes*, 1775.

Where one tenant in common refuſes to let the other enjoy a moiety, an ejectment lies, and afterwards an action for the meſne profits. Goodtitle v, Tombs, C. B. 10 G. 3.

Decla-

Declaration uncertain, being for a Meſſuage lying in the pariſhes of A. *and* B. *or one of them.* *See p.* 16.

Cro. Jac. 124.

Ejectment of a meſſuage and lands, lying in the pariſhes of *A.* and *B. or one of them*, in the city and county of *Coventry*, and judgment arreſted: being *Or one of them*, made it altogether incertain, both in regard to the defendant (what to defend for) and in regard to the ſheriff (how to deliver poſſeſſion.)

CHAP. V.

What ſhall be deemed an ouſter.

Co. Litt. 199. b.

TAKING the whole profits by one *tenant in common* is no ejectment, but if he drive out of the land any of the cattle of the other tenant in common, or does not ſuffer him to enter or occupy the land, this is an ejectment or expulſion; whereupon he may have an *ejectione firmæ*, for the one moiety, and recover damages for the entry, but not for the meſne profits.

Lat. 82. Paſch. 1 Car. Cally v. Fiſher.

Ejectment of *part* of a *great cloſe*, is an ejectment of *all*.

CHAP.

CHAP. VI.

Of the Declaration, and how to be ſerved.

GET a blank declaration in ejectment, unſtampt, to keep for your uſe, fill it up, and likewiſe as many on treble-penny ſtamps as there are tenants of the tenements you ſue for, agreeable to your copy, in order that you may make an affidavit of the ſervice of them.

If there are ſeveral tenants in poſſeſſion, the plaintiff muſt deliver a declaration to each of them. Buller 96.

The uſual practice is, to put all the tenants names into one declaration, and to deliver a copy of it to each tenant, where the premiſes are under one joint title. Vid. Styles Prac. Reg. 400.

Any body may ſerve the declaration, but it muſt be delivered to the tenant in poſſeſſion, or his wife. The notice at the botom muſt be read to the tenant by the perſon who delivers it, which perſon muſt tell the tenant, that, unleſs he procures ſome attorney to appear for him, he will be turned out of poſſeſſion. Lilly's P. R. continued, 377.

The

Buller 94. The ſervice of the declaration may be on the tenant himſelf, in any place off the premiſes, but if it is on the wife, it muſt be on the premiſes.

Savage v. Dent. 10 Geo. 2. If tenant is removed, he may be ſerved *perſonally* off the premiſes, and in caſe of renting land to which there is no houſe or barn, if it is known where the tenant lives, he muſt be ſerved.

1 Barnes Notes 126. Tender of declaration to the tenant's wife, and acquainting her with the contents, is good ſervice.

Buller 94. If the declaration is ſerved on the tenant's ſervant, ſon, or daughter, *&c.* there muſt be ſome acknowledgement by the tenant of having received it.

Burr. 1116. and 1180. M. S. S. notes. If the tenant abſconds to avoid being ſerved with an ejectment, you may ſerve a declaration on ſome perſon in the houſe, and fix another on the door; and the court on motion, and affidavit of the circumſtances, will grant a rule to ſhew cauſe, why ſuch ſervice ſhould not be ſufficient; which rule is generally made abſolute, on affidavit of ſervice.

Delcarations in ejectment ought to be delivered before the *essoin day* of an issuable term; and the practice is, to deliver them in the vacation before an issuable term, and the title of such declaration is of the term preceding such vacation. Att.'s Guide. 324.

In country ejectments, though the declaration is delivered before the *essoin day* of *Easter* or *Michaelmas* term, yet the tenant has four days after the end of the next issuable term, *(viz. Hilary* or *Trinity)* to appear in. So, plaintiff is as forward by delivering a declaration in the beginning of *January*, as he would have been if he had delivered it after the *essoin day* of *Trinity* term. Mss. Notes.

In country ejectments, notice must be to appear the next term generally; and defendant has then the whole term to appear in. Atty's Guide 320.

The declaration must shew, what sort of land is claimed, as meadow, pasture, *&c.* Lily's P. R. cont. 380.

Also the quantum of the land. 1 Salk. 254.

As to the manner of describing the Parcels. Vid. Lily P. R. 379 & 380.

Parker

Mich. 1° G. 2. C. B Dawbell on demiſe of Brooke, a-gainſt Brooke. Mſs.

Parker, Serjeant, moved in arreſt of judgment, for, that the declaration in ejectment was of one meſſuage, cottage, *or* tenement; and inſiſted, that this was altogether incertain, and no judgment could be given; and inſiſted, that this could not be helped by releaſing that part, and that it had been ſo determined, *Eaſter* 2 *G.* 2. *B. R. Goodtitle* v. *Walton*, where the declaration was, one meſſuage, one tenement, and it was there held, that the plaintiff could not releaſe. And judgment was arreſted. See *ante* p. 12.

Eaſt. 5 Geo. 3. on the demiſe of Neale v. Roe. Mſs.

Ejectment, motion for judgment, affidavit of a copy of declaration tendred to the wife of tenant in poſſeſſion of the ſhop, and would have read the notice, but ſhe refuſed to hear it, or receive the declaration, and ſaid, ſhe would have nothing to do with it, and turned out of the ſhop, and ſhut the door after her: whereupon the declaration was left in the ſhop.

J. *Bathurſt* and J. *Gould*, thought this not quite ſufficient ſervice, as the notice ought to have been read aloud in the ſhop, though no one was there; but, as this was a hard caſe, they made a rule to ſhew cauſe, why this ſhould not be deemed good ſervice.

CHAP.

CHAP. VII.

Proceedings by Original.

IN *K. B.* you may proceed in ejectment by original, becauſe it is an action of treſpaſs, which is cognizable in this court; it being a criminal cauſe, for which there is a fine due to the king, and then the declaration is in the *Common Pleas* form, *viz.* "That the defendant was attached to anſwer, *&c.*" Gilbert's Law of Ejectments 20.

In the printed rule of conſent you ſtrike out the words, "filing common bail," and file your plea with the filazer of *K. B.* The *venire*, *diſtringas*, *&c.* muſt be returnable *ubicumque tunc fuerimus in* Anglia. Practice Queen's B. 111.

There is this benefit in proceeding by original in *K. B.* that a writ of error cannot be brought, or at leaſt is not returnable, but when the parliament is ſitting, and therefore the writ of error cannot be allowed but in the intervals of parliament; and though the ſtatute of 27 *Eliz. c.* 8. gives a writ of error in the Exchequer chamber in ſeveral actions, amongſt which are Gilbert's Ejectments p. 20.

ejectments, yet it excepts the caſe where the king is a party, and the king is ſuppoſed to be a party in all actions which puniſh treſpaſs in a criminal manner, as the ejectment is when it commences by original writ returnable in *K. B.*

CHAP. VIII.

Of altering Plaintiff or Defendant.

Sty. 368. Hil. 1652. C. B. Anon.

IF one moves, that the title of land belongs to him, and that the plaintiff made an ejector of his own, and thereupon prays, that, giving ſecurity to the ejector to ſave him harmleſs, *he may defend the title*, this court of *C. B.* will grant it, but not compel the plaintiff to confeſs leaſe, entry, and ouſter, except he will be ejector himſelf; but it is otherwiſe in *B. R.* for there in both caſes they will compel him to confeſs leaſe, entry, and ouſter; *per Pinſent* prothonotary. But *quere, &c.*

Sid. 24 pl. 5. Hill. 12 Car. 2 C. B. Anon.

After declaration defended, and *before plea pleaded*, he that had the title moved the court to *alter the plaintiff*, he being a witneſs in the cauſe; and the court agreed, on payment of coſts, and giving ſecurity

curity for new coſts, and this as it ſeems without imparlance.

No man is to be *admitted tenant*, or defendant in ejectment, by the common rule, unleſs he has been in poſſeſſion, or received rents, and not a mere ſtranger. *Per Holt*, Ch. J.

Cumb. 209. Trin. 5 W. & M. in B. R.

Landlord may be joined a defendant if he requires it, but is not compellable.

1 Salk. 256. pl. 6. Trin. 11 W. 3. B. R. Underhill v. Durham.

Truſtees are not to be joined with the tenant as defendants in ejectment without their conſent.

Comb. 332. Trin. 7 W. 3. B. R. Jones, leſſee of Pride, v. Carwithen.

A *peer intereſted* made defendant in ejectment with tenant in poſſeſſion, which the court thought reaſonable, and ſaid there might be ſeveral coſts notwithſtanding.

Comb. 339. Trin. 7 W. 3. B. R. Jones, leſſee of Pride, v. Carwithen.

11 *Geo.* 2. *cap.* 19. *ſect.* 13. *Landlord may make himſelf defendant* * *by* joining with the

* Where the act ſays, that in caſe judgment in ejectment be had againſt the tenant in poſſeſſion, on his refuſing or neglecting to appear, (no notice being given

the tenant *to whom ſuch declaration in ejectment ſhall be delivered, in caſe he ſhall appear; but, in caſe ſuch tenant ſhall refuſe or neglect to appear, judgment ſhall be ſigned againſt the caſual ejector, for want of ſuch appearance; but if the landlord of any part of the lands, tenements,* &c. *for which ſuch ejectment was brought, ſhall deſire to appear by himſelf, and conſent to enter into the like rule, that, by the courſe of the court, the tenant in poſſeſſion, in caſe he had appeared, ought to have done, then the court where ſuch ejectment ſhall be brought, ſhall and may permit ſuch landlord ſo to do, and order a ſtay of execution upon ſuch judgment againſt the caſual ejector, until they ſhall make further order therein.*

---

given to the landlord) the landlord may move, that execution be ſtayed, on entering into a rule to become defendant himſelf in another ejectment, &c. yet in caſe *judgment is ſigned ſo late in the term that the landlord cannot apply for a ſtay of execution*, yet upon application by the landlord, as ſoon as may be, the court will ſet aſide the execution upon this judgment, although the words are only (ſtay execution) M. 12 *Geo.* 2. in *B. R.* in caſe of Sir *W. Clayton* v. *Boone.*

CHAP.

CHAP. IX.

As to the Term expiring.

IN Ejectment, if the term *expires pending the ſuit*, the plaintiff ſhall go on to *recover damages*; for though the action is at an end *quoad*, the poſſeſſion, yet it continues for the damages after the term ended. Arg. 3 Mod. 249.

Tenant for years has judgment in ejectment, and the term incurs, then he brings a *ſcire facias quare executionem habere non debet of the land, and his damages and coſts*, and a demurrer to the *ſcire facias*, and the court held the *ſcire facias* ill; for though he may have a *ſcire facias* for damages and coſts, yet this being for the term likewiſe for which it was incurred, it was ill, and a *new ſcire facias* ought to be afterwards in the next term; it was argued by *Holt*, that the *ſcire facias* was good for the damages, but not allowed. A new *ſcire facias* was granted. Skin. 161. pl. 10. Hil. 35 Car. 2. B. R. Sedgwith v. Groſton.

Comb. 50. Paſch. 3 Jac. 2. B. R. Dighton v. Grenvill.

The court compelled the defendant to conſent to the *enlargement of a term* in an ejectment leaſe.

6 Mod. 130. Paſch. 3 Ann. B. R. Anon.

Leaſe for five years, and verdict for plaintiff, but he was delayed of judgment, and execution *by injunction* out of Chancery till the *term expired*. Upon motion to *renew the term*, it was ſaid to have been done in the caſe of *Dangdell* v. *Greenvill*, and it was frequently done in the Exchequer, and *Gould*, J. ſaid, that in Sir *John Roll*'s caſe, they held it might be done by conſent, but not otherwiſe. Motion was denied.

CHAP. X.

Declaration not amendable.

Barnes's Notes 113. 1 Ld. Raym. 728. 2 Strange 1211.

A Declaration in ejectment is not amendable, becauſe it is the firſt proceſs.

1 Show. 206.

In 1*ſt Shower* 206. *Holt* held the declaration in ejectment not amendable, and that no other leaſe is confeſſed but what is laid in the declaration.

The

The demiſe laid in the declaration cannot be amended. 2 Barnes 153. 3 Burr. 1159.

The plaintiff muſt ſtand or fall by his declaration as it is, or deliver a new one. Lily's P. R. 377.

If you bring an ejectment which you cannot ſupport, and the defendant appears to it, you muſt get a rule to diſcontinue, on payment of coſts.

Ejectment for land in *Middleſex*, delivered before *Eſſoin* day of this term. M. 17 G. 2. B. R. Doe, on the demiſe of Stephenſon, v.

Motion to amend the declaration delivered as of *Trinity*, 17 *Geo.* 2. when it ought to be the 16th and 17th of *Geo.* 2. or that the plaintiff might have judgment if the tenant did not appear in four days after notice of the rule. MSS.

Court denied the motion in every reſpect, and ſaid they could do nothing in it: that declarations in ejectment were conſidered as originals, and were not amendable, and that it had never been done.

Burnet, J. ſaid the court of *B. R.* had frequently refuſed ſuch motions.

Dower, on dem. of Scrulton v. Stratton. Mſs.

To amend the declaration in the time of the demiſe, rule to ſhew cauſe was diſcharged, becauſe it is the ſtanding rule of all courts to refuſe it, being a making a new declaration, and a new title.

CHAP XI.

How to lay the Demiſe.

Buller 97.

THE demiſe may be laid any day after the title accrues, or the rent becomes due, and before the declaration delivered; for if the leſſor had not a right of entry at the time of the demiſe laid in the declaration, he will be non-ſuited.

Strange 1087. Contra Buller 86. 87.

Tho you muſt be careful not to lay your demiſe before your title accrued, yet it is prudent to lay it as ſoon afterwards as poſſible; for in an action for the meſne profits you can recover only from the time of the demiſe, ſaid *arguendo*.

Where rent is payable half yearly with a clauſe of re-entry, if it is not paid within fourteen days after it is due, the demiſe muſt be on the 15th and 16th day after the pay day.

You

You may lay as many demiſes as you pleaſe, and if the plaintiff recovers in one it is ſufficient, *pro tanto*. Mr. Yates opinion. Lilly's P. R. continued 379.

It is uſual to have ſeveral demiſes, leſt one ſhould fail; and if it is a mortgaged eſtate, the eſtate is become abſolute in the mortgagee, then it is neceſſary to count on the mortgage. Blackſtone, title Ejectment.

So when a term is aſſigned to attend the inheritance, or where a term is limited to truſtees, for ſecuring the payment of an annuity or portions, *&c.* though the truſtees ſeldom act, yet it is uſual for the *ceſtuy que* truſt to bring an ejectment in their names, and to inſert a count in his own name.

The confeſſion of leaſe entry and ouſter only confeſſes, that there was in fact ſuch a leaſe as is ſet out in the declaration, but if that he had a leaſe it may ſtill be taken advantage of, as for inſtance where the leaſe appears not to commence till after the action brought.

Where a declaration is of *Eaſter* term, and the demiſe is laid after the end of *Eaſter* term, and before the *Eſſoin* day of *Trinity* 1. Lily's P. R. continued 301.

Trinity, and alſo delivered before the *Eſſoin* day of *Trinity*, to the tenant in poſſeſſion, yet this is good, though the demiſe is laid after *Eaſter* term; becauſe when the tenant appears he muſt by the conſent rule, accept a declaration of *Trinity* term, ſo that the declaration to which the tenant is defendant is of *Trinity* term, which is after the demiſe.

Id. 380. If plaintiff lays his demiſe on 1ſt *December*, and he had then a title, and the defendant at the trial gives in evidence, a title in himſelf, which commenced 1ſt *January*, here plaintiff ſhall recover his damages from 1ſt *December* to 1ſt *January*.

CHAP. XII.

Pleadings in Ejectment.

Dal. 105. anno. 15. Eliz. Covert v. Leonard. IF a *leaſe* is *dated the* 28*th* day, and it is *ſealed on the land*, after the commencement of the term, *viz. the* 29*th day*, and *the ejectment is ſuppoſed and laid to be the* 30*th day*, this is well enough, though the leſſee did not enter on the 30th day, but the day before. *Per Dyer.*

The

The plaintiff counts of a leaſe of the *fourth part of a houſe* in *N.* in four parts to be divided, by force of which he entered in *tenementa prædict'*, and was thereof poſſeſſed, until the defendant did eject him *de tenementis prædict'*, and held good. Cro. E. 286 pl. 2. Trin. 34. Eliz. B. R. Rawſon v. Maynard.

Exception to a *declaration* in an *ejectione firmæ*, becauſe *it was a poſſeſſione ſua (inde) ejecit*, where it ought to be according to the ſuppoſal of the writ. *Quod a firma ſua ejecit*, all the juſtices held that the word *(inde) had relation to the farm*, and ſhould be as much as if he had ſaid, *a poſſeſſione firma*, and the declaration was ruled to be good, notwithſtanding the exception. Godb. 71. pl. 85. Mich. 28. and 29. Eliz. B. R. Anon.

Alſo it was *of three cloſes, naming them* with a *(viz.) containing by eſtimation thirty acres*, which was objected did contain no certainty, where he ought to have alledged in fact, that they did contain ſo many acres. But it was holden by all the juſtices, that although he does not put in the declaration the certainty of the acres, if he *gives a certain name to them, as Green Cloſe, &c.* that it is good. Godb. 71. in S. C.

In

Godb. 60. pl. 72. Mich. 28. and 29. Eliz. B. R. Anon.

In an *ejectione firmæ* exception was taken becauſe the *plaintiff in his declaration did not ſay extra tenet*; for in every caſe where a man is to recover poſſeſſion, he ought to ſay *extra tenet*. But all the juſtices agreed that in an *ejection firmæ* thoſe words were not material; for, if the defendant put out the plaintiff, it is ſufficient to maintain this action. And *Kempe* ſecondary ſaid, that ſo were all the ancient precedents, although of late times it had been uſual to ſay in a declaration *extra tenet*; and the declaration was holden to be good without thoſe words.

2. Le. 117. pl. 157. Paſch. 30. Eliz. B. R. Cony v'. Cholmley.

In ejectment the plaintiff declared, *Quod cum, R. D. per indenturam ſuam gerent. dat.* 20. *Maii dimiſit &c.* exception was taken that he ought to have ſaid *iiſdem die & anno*; for though the indenture bears date as above, yet, it may be, it was delivered at another day, and then it begins to be a demiſe. But judgment was given for the plaintiff.

4. Le. 144. pl. 255. Trin. 31. Eliz. B. R. Higham v. Cooke.

Ejectione firmæ by *H.* againſt *C.* the plaintiff declared upon a *leaſe for years, to have and to hold* to him *from the ſealing and delivery of it; and declared that the ſealing and delivery was 1ſt May, and the ejectment*

ment the ſame day; and this matter was moved in arreſt of judgment, that the ejectment could not be ſuppoſed the ſame day, for the leaſe did not begin till the next day enſuing the ſealing, *&c.* But the execution was not allowed by the court, for where the leaſe is to begin from the time of the ſealing and delivery, or by theſe words, for twenty one years next following the ejectment, may be well ſuppoſed to be the ſame day; for the beginning of the leaſe is preſently upon the ſealing and delivery, and ſuch a leaſe ſhall end the ſame time and hour as it began.

Ejectione firmæ of a leaſe made 20th Auguſt from Michaelmas then laſt, ante datum hujus indenturæ, and he *ſhews neither the indenture nor the date of it*, which was ſaid to be not good, becauſe it does not appear when the leaſe began; but the court held it good, and the words *ante datum indenturæ* ſhall be void, and the beginning of the leaſe appears certain enough, and judgment for the plaintiff.

Cro. E. 606. pl. 5 Paſch. 40. Eliz. B. R. Darrel v. Middleton.

Ejectione firmæ; the plaintiff *declared of a leaſe for years, habendum a die datus virtute cujus dimiſſionis*, he entered and *was poſſeſſed until the defendant ejected him.* It was

Cro. E. 766. pl 4 Trin. 42 Eliz and 43 Eliz. B R. Douglaſs v'. Shank.

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ment the ſame day; and this matter was moved in arreſt of judgment, that the ejectment could not be ſuppoſed the ſame day, for the leaſe did not begin till the next day enſuing the ſealing, *&c.* But the execution was not allowed by the court, for where the leaſe is to begin from the time of the ſealing and delivery, or by theſe words, for twenty one years next following the ejectment, may be well ſuppoſed to be the ſame day; for the beginning of the leaſe is preſently upon the ſealing and delivery, and ſuch a leaſe ſhall end the ſame time and hour as it began.

Ejectione firmæ of a leaſe made 20th Auguſt from Michaelmas then laſt, ante datum hujus indenturæ, and he *ſhews neither the indenture nor the date of it*, which was ſaid to be not good, becauſe it does not appear when the leaſe began; but the court held it good, and the words *ante datum indenturæ* ſhall be void, and the beginning of the leaſe appears certain enough, and judgment for the plaintiff.

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Cro. E. 766. pl 4. Trin. 42 Eliz and 43 Eliz. B R. Douglaſs v'. Shank.

was moved in arreſt of judgment, that the declaration was not good, becauſe the *time of the entry was not alledged*; for if he entred on the day of the demiſe he is a diſſeiſor, and then the action not maintainable; *adjurentur*; but afterwards it was obſerved, that for that cauſe the declaration was ill, and adjudged for the defendant.

Jenk. 341 pl. 98. cites Cro. J. 311. pl 11. Mich. 10 Jac. Merrel v. Smith.

In *ejectione firmæ*, the courſe of *C. B.* is where the defendant appears, then to count, and after imparlance make a ſecond count by way of recital; but the firſt ought to contain the ſubſtance of the matter. In the firſt count in this caſe the *leaſe is alledged to be made* 25. *March*, 6. *Jac. and* afterwards *the ejectment, the ſaid* 6. *Jac. without mentioning the day of the ejectment*; the ſecond count mentions the ejectment to be the 26th of *March* 6. *Jac.* and the *ejectione firmæ* was brought in the 7. *Jac.* The plaintiff had judgment affirmed in error; *a certain day of the ejectment is not neceſſary to be alledged in the count; it will ſerve to ſay, poſtea, &c.*

11. Rep 25. b. Trin. 12. Jac. Harpur's caſe.

An ejectment lies not *de omnibus & omnimodis indecims W. without ſay in g. garbarum fæni, lanæ, agnellorum, or ſome other cer-*

tainty

tainty of the nature or quality of the tythes, ſo that a certain judgment may be given, or execution by *habere facias poſſeſſionem* be had thereof, and though the certain number thereof ſhall not be expreſſed (for the fruitfulneſs or barrenneſs may be more or leſs) yet the certain kinds ought to be ſhewed, and all the tything may conſiſt in *modo decimandi*, by payment of an annual ſum in ſatisfaction thereof, of which no ejectment lies; for the ſtatute of 32. *H.* 8. cap. 7. which gives the action for tythes, gives it as they ſhould or might do for land; and in an action for lands, the plaintiff ought to ſhew the quality or nature thereof, as arable land, meadow, paſture, *&c.*

Original in ejectment was againſt *A.* and three others; plaintiff counts againſt three of the defendants, and no *(ſimul cum)* againſt the fourth judgment was ſtaid.

Per. tot. Cur. Brownl. 129. Trin. 13. Jac. cites Goodhall v. Hill.

Ejectione firmæ of a *leaſe* 21. *October* 4. *Jac. & quod poſtea ſcilicit eodem* 21*ſt October, anno* 3. *Jac. ſupradict. he ejected him.* It was moved, that the ejectment being alledged to be a year before, the leaſe is void, but 3. *Tanfield, e contra*, held it to be good

Cro. J 154. pl 4 Paſch. 5 Jac B. R. Brigate v. Shork

good, becauſe the words be *poſtea ſcilicet eodem* 21. *die Oct.* and therefore there needed not any year to be mentioned, before and repugnant to the day mentioned is idle.

Ow. 133. Trin. 43. Eliz. C, B. Day v. Fynn.

In ejectment, the plaintiff *declared of a leaſe for years, of a houſe and thirty acres of land in D. and that J. S did let to him the ſaid meſſuage and thirty acres, by the name of his houſe in B. and ten acres of land there, ſive plus ſive minus*; it was moved in arreſt of judgment, becauſe that thirty acres cannot paſs by the name of ten acres, *ſive plus ſive minus*, and ſo the plaintiff has not conveyed to him thirty acres; for when ten acres are leaſed to him, *ſive plus ſive minus*, theſe words ought to have a reaſonable conſtruction, to paſs a reaſonable quantity, either more or leſs, and not twenty or thirty acres more. *Yelverton* agreed; for the words ten acres, *ſive plus ſive minus, ought to be intended of a reaſonable quantity*, more or leſs by a quarter of an acre, or two or three at the moſt; but if it be three acres leſs than ten, the leſſee muſt be content with it; *Quod Fenner* and *Crook conceſſerunt*, and judgment was ſtaid.

In

In ejectment, the plaintiff *declared of a leaſe the 6th September, and that he was poſſeſſed and that poſtea ſcilicet, 4th September, the defendant ejected him.* This Declaration was held good by three juſtices, and that it is ſufficient that he declared of his poſſeſſion *virtute dimiſſionis*, and he was afterwards ejected, an *the ziz. the 4th September, is void and repugnant.*

Arg. Sid. 8. cites it as Cro. Jac.

Ejectione firmæ was brought upon a *leaſe 1ſt January, 3. Jac. habend a datu indenturæ prædict'*, and the *ejectment was the ſame day*, reſolved the date is the time of the delivery, and it differs from the time or day of delivery, wherefore the ejectment alleged *poſtea* the ſame day, is good enough; adjudged for the plaintiff.

Cro, J 135. pl. 10. Mich. 4. Jac B. R. Oſborn v. Rider.

The *leaſe was dated 8th May 7. Jac.* and the *ejectment was laid 13th May 7. Jac. and the action was brought in Eaſter term following.* Adjudged that if the ejectment is proved at any time after the leaſe, and before the action brought, it is ſufficient, though it was laid at a certain time which the plaintiff could not prove; but becauſe the plaintiff failed to prove this, the plaintiff was nonſuited.

Bulſt. 122. Paſch. 9. Jac. Hall v. King.

Cro. J. 425. pl. 4 Mich. 15 Jac. B. R. Wilkes v. Sparrow.

Ejectione firmæ of two closes, called the higher G. and the lower G. containing three acres of land; it was said the words *containing three acres of land*, were uncertain, and *Savil's case*, 11. *rep.* was vouched; but adjudged by three justices, *contra Houghton*, that the *ejectione firmæ* did lie, and this case differs from *Savil's*, for there neither the quantity or quality of the land is mentioned, but here the saying *containing three acres of land*, and the closes being named, it is certain enough what the nature of the land is; and although the closes do contain *more than three acres*, he shall recover the whole closes.

Brownl. 128. Trin. 16 Jac. Hill v. Scales.

In ejectment, the plaintiff *declared on a lease* made to him *by one J. C. dated 1st January, 15. Jac. and sealed and delivered 5th January following, to hold from Christmas last past for two years*; the jury found the lease and a letter of attorney to execute it (*viz.*) that the lessor was seized in fee of the lands, and being so seized, *he made, signed and sealed, an indenture of demise in hæc verba, &c. but did not deliver it as his deed to the plaintiff, on the 5th day of January, but by a letter of attorney, bearing date on that day, he gave full power to M. M. his attorney, to enter* on the lands in his name, and,

and, after poſſeſſion taken, to deliver the ſaid indenture to the plaintiff, by virtue whereof he entred, and immediately afterwards delivered the leaſe to the plaintiff, as the deed of the leſſor. It was objected that this declaration was ill, for the plaintiff declared on a leaſe made to him by *J. C.* which if ſo, then the letter of attorney had been idle and to no purpoſe, but adjudged good, and that it was the leaſe of the leſſor.

Ejectione firmæ of a leaſe of tythes, and does *not ſhew that it was by deed*, and becauſe tythes cannot paſs without deed, after verdict for the plaintiff, exception being taken for this cauſe, it was ruled to to be ill, and adjudged for the defendant.

Cro. J. 613. pl. 3 Paſch. 19 Jac. B. R. Swadling v. Piers.

Ejectione firmæ of a leaſe made by the Lady Morley to the plaintiff, 1. *Maii*. 14. *Jac. for five years, if ſhe ſo long lived, and that he entred and was poſſeſſed, and that the defendant poſtea viz.* (6. *Maii.*) *entred upon him and ejected him, a termino ſuo prædict' nondum finito*. It was ſaid the declaration was not good, becauſe *there is not any averment of the life of the leſſor, at the time of the action brought*; three juſtices *contra*, *Chamberlain* held it good enough, for he

Cro. J. 622. pl. 13. Mich. 19. Jac. B. R. Arundel v. Mead.

ſhewing that the defendant ejected him *a termino nondum finito*, implies the lady was alive; judgment was for the plaintiff, and the judgment affirmed on a writ of error brought.

Cro. J. 662. pl. 12 Hill. 20. Jac. Rutter v. Mills.

If in ejectment the plaintiff *declares of a leaſe the 22d May 20. Jac. habend' a primo die Maii for three years, virtute cujus he entred and was poſſeſſed quouſque poſtea, ſcilicet eiſd, die & anno, the defendant ejected him*; this is well enough, for his entry being laid to be *virtute dimiſſionis the poſtea eiſd' die, &c. refers to the day of the leaſe made*; adjudged in *B. R.* and that judgment affirmed in *cam. ſcacc.* upon a writ of error accordingly; though it was objected that the *eiſd' die, &c.* referred to the laſt antecedent, and ſo the ejectment was laid before the leaſe commenced.

2. Roll. Rep. 466. Mich. 22. Jac. B. R. Wakely v. Warren.

Judgment was for the plaintiff in ejectment brought in *Ireland*, and error aſſigned was, that the plaintiff had *declared on a leaſe made to him to commence at a day to come, virtute cujus he entred and was poſſeſſed, and did not ſhew when he* entred, *either before or after the day* on which the leaſe was to commence, *ſed non allocatur*, becauſe he ſaid *virtute cujus, &c.* But *Ley Ch.*

Ch. J. ſaid, that if he had ſaid *prætextu cujus*, it had been otherwiſe.

If the firſt declaration in the *Common Pleas* is vitious, and the ſecond is as it ought to be, the firſt is not amendable in this caſe; for the firſt declaration is the foundation, and the ſecond is only by way of recital. Jenk. 325. at the end of pl. 41.

B. brought an *ejectione firmæ* againſt *J.* and *declared upon a leaſe* of land *habendum a die dat.' indentur.' prædict.' and does not ſpeak of any indenture before:* and for that the declaration adjudged naught. Hetl. 63. Mich. 3 Car. C. B. Brady v. Johnſon.

It was reſolved that an *ejectione firmæ* of 40 *acres of land by eſtimation* is not good, for the demand ought to be certain. Ley 82. Mich. Car. in caſe of Row, v. Ocam.

The declaration was of *a meſſuage and* 40 *acres of land, meadow and paſture* thereto appertaining, and it was *not diſtinguiſhed how much* there was in land, how much in meadow, and how much in paſture, therefore the judgment was reverſed. Cro. Car. 573. pl. 13. Hil. 15 Car. B. R. Martyn v. Nichols.

In error of a judgment in *Ireland*, the error aſſigned was, that the plaintiff *declared upon a demiſe made* 12 *Junii, &c. ha-* 3 Mod. 198. Paſch. 4 Jac. 2. B R. Evans v. Crocker.

habendum a prædicto duodecimo die Junii, (which muſt be the 13th day of the ſame month) *uſq; &c. virtute cujus quidem dimiſſionis he entred, &c. and that the defendant poſtea ſcilicet eodem duodecimo die Junii did eject him, &c.* ſo that it appears upon the face of the declaration, that the *defendant entered before the plaintiff had a title*; for the leaſe commenced on the 13th of *June*, and the entry was on the 12th of that month. *Per curiam*, the *plaintiff entered as a diſſeiſor by his own ſhewing*, and thereupon judgment was reverſed.

3 Lev. 117. Paſch. 34 Car. 2. in cam. ſcacc. Turbevill v. Stockton.

A. B. and *C.* jointenants, *join* in the leaſe of a *houſe to* J. S. *to commence from* Michaelmas *laſt*, afterwards, *on the ſame day*, B. *and* C. without A. *demiſe the ſame houſe to* J. S. *to commence from the ſame time, and for the ſame number of years*, as in the leaſe made by all three, and in ejectment by *J. S.* he declares upon both theſe leaſes. Reſolved, that the declaration was not double, for when the three demiſed the whole, and afterwards two of them demiſed all the ſame thing, this is a *ſurrender* of the firſt leaſe, and a new leaſe of their two parts, and the old leaſe continues as to the third part of *A.* and

ſo

ſo *J. S.* entered, and was poſſeſſed by both leaſes, *viz.* of the third part of *A.* by the firſt leaſe, and of the two parts of *B.* and *C.* by the ſecond leaſe.

In ejectment the plaintiff declared, that *Frances Ford*, and *Elizabeth*, *dimiſerunt*, and put no ſurname to *Elizabeth*. After verdict for the plaintiff it was moved, that this was a joint demiſe, and no ſurname being given to one of the parties, the declaration was void, and the court held it void for the uncertainty, and ſo judgment was arreſted.

Freem. Rep. 146. pl. 167. Paſch. 1674. Carter v. Weſt.

Declaration in ejectment mentions the demiſe to be for eleven years, *habendum from the ſame day on which the entry is alledged to be*, and ill.

Cumb. 83. Paſch 4 Jac. 2. B. R Stephens v. Croker.

Declaration recited an original, and an *original was produced*, *teſte* 2 Novembris, *which was after the demiſe*. And the prothonotary informed the court, that this was frequently allowed, and that no memorandum of the original's bearing teſte within the term was uſed to be made upon the record.

2 Vent. 174. Paſch. 2 W. & M. C. B. Turnſtall v. Brend.

Comb. 290. Trin. 6 W. & M. in B. R.

A fine was levied in *Hilary* term, and an ejectment brought upon the title, and the *demiſe was laid before the fine took effect*, and upon motion it was ordered that the demiſe be laid of *Lady-day* laſt.

Comb. 290. Trin. 6 W. & M. in B. R.

Two or three *ſeveral demiſes from ſeveral perſons* may be laid in one declaration in ejectment.

Comb. 190. Paſch. 4 W. & M. in B. R. Moor v. Parndon.

Error on a judgment in *C. B.* in ejectment. The error aſſigned was, that the *declaration was on two demiſes*, and there was *no habendum in the firſt*, *but* afterwards the *ſecond demiſe* was *habendum tenementa prædicta*, which, as it was urged, did not extend to both the demiſes, nor would it be good in caſe of a grant, and the judgment is intire *quod recuperet terminos prædict'*; but *per cur.* it is well enough, and the judgment was affirmed.

Comb. 213. Trin. 5 W. & M. in B. R. per Eyres, J.

If two *tenants in common* are diſſeiſed, their leſſee in ejectment muſt declare upon *two ſeveral demiſes*.

Carth. 288. Mich. 5 W. & M. in B. R Cook v. Darbyſon.

The *demiſe was on the Eſſoin day* of *Hilary* term, and the declaration *was of the ſame* Hilary *term*, both which relate to the firſt day, and ſo the action was brought be-

before the title accrued, or at leaſt on the very ſame day, which cannot be, becauſe the law allows no *fractions of days*. But *per cur.* this being after a verdict, the Ch. J. ſaid, that if the plaintiff in error would take advantage in this matter, he ſhould have alledged *diminution*, and procured the original writ to be certified, and if that was returnable before the plaintiff's title it would have been error.

Ejectment was *brought as of the laſt term*, and the *demiſe was laid in October*, the tenant does not appear. *Holt* ſaid, *he would not grant a rule for judgment* againſt the caſual ejector, *where it appears upon the record that the ejectment was brought before title accrued*, though the practice may have been ſo.

Comb. 345. Mich. 7 W. 3. B R. Clayton v. ——.

Ejectment of lands in *Suffolk, upon the demiſe of the corporation of Bury*. Upon Not guilty pleaded, a verdict was given for the plaintiff. But it was moved in arreſt of judgment in *C. B.* that it does *not appear upon the record that the leaſe was by deed*. And the prothonotaries there certified, that the practice was (notwithſtanding the common rule, of confeſſing leaſe, entry, and ouſter in ejectment) for things

Ld. Raym. Rep. 136. Hil. 8 & 9 W. 3. Partridge v. Ball.

things incorporeal, as tithes, or upon demiſes of corporations, to lay the demiſe by deed. But it was adjudged in *C. B.* that it was aided by verdict. And judgment was given there for the plaintiff. Upon which error was brought in *B. R.* and that judgment was affirmed. And *Holt*, Ch. J. ſaid, that at this day the caſe of 2 *Cro.* 613. *Swadling* v. *Piers*, is not law.

Ld. Raym. Rep. 561. Paſch. 12 W. 3. Slabourne v. Bengo.

In ejectment the plaintiff *declared upon two ſeveral demiſes habendum tenementa prædicta, &c. by virtue whereof he entered, and was poſſeſſed, quouſque the defendant entered in tenementa, and the plaintiff expulit et amovit a termino ſuo prædicto inde nondum finito, &c.* Mr. *Northey* moved, in arreſt of judgment, that *tenementa prædicta* was uncertain, and therefore ill, for it did not appear which. The ſame of *termino ſuo prædicto inde nondum finito*, which makes the former objection the ſtronger, becauſe it complains but of one. But the court held the firſt to be well enough, and that it would extend to both; and as to the other, if it had been omitted, the declaration had been well enough, and therefore it would not hurt it. Judgment for the plaintiff.

Per totam curiam, by the courſe of this court *there can be no alteration in the declaration in the iſſue from the firſt declaration delivered only in the defendant's name*. And a rule was made, that the iſſue ſhould be made according to the declaration delivered againſt the caſual ejector.

Ld. Raym. Rep. 1411. Mich. 12 G. in caſe of Baſs v. Bradford.

In ejectment the plaintiff declared *of the manor of* Queenborough, *with the appurtenances*, 400 *acres of land, and common of paſture for all manner of* cattle, and for the rectory and advowſon, with the appurtenances, and for all manner of tithes, and held good. *Hill.* 6 *Geo.* 2. *B. R.* and affirmed in error in the Exchequer chamber, *Trin.* 8 and 9 *Geo.* 2. and afterwards in the Houſe of Lords, 10 *March*, 1735.

Doe, on the demiſe of Sairl, v. Borlace.

In ejectment the plaintiff declared *of* 100 *acres of marſh, and one beaſt-gate*, with the appurtenances; after judgment a writ of error was brought, and the error aſſigned was, that the declaration was ill, for the uncertainty what is meant by the word *(beaſt-gate.)* On the contrary, a caſe was cited, where ſo many acres of *(alder-carves)* in the county of *Norfolk*, was held good, becauſe it was a term well known

Hil. 11 G. 2. B. R. Bennington v. Goodtitle.

known in that country. And in the caſe of *Metcalf* v. *Roe*, *Mich.* 9 *Geo.* 2. *ten acres of paſture, and cattle-gates*, was held good. The court held the ejectment was well laid, and ſaid there was no difference between *cattle-gate*, in the caſe of *Roe* v. *Metcalf*, and *beaſt-gate*, in the preſent caſe. And that any name well underſtood in the particular place to denote a certain ſort or quantity of land is good. And *per Lee*, Ch. J. ſo many acres of *(mountain)* in *Ireland* is good. And the judgment was affirmed.

Bro. (Eject.) Pl. 12. cites 46 E. 3. 5.

Ejectione cuſtodiæ by the lord, the *defendant ſaid, that he is tenant by the curteſy of the ſame land, by which he entered*, &c. the *plaintiff ſaid the land was ſpecially tailed to the feme and her firſt baron, and to the heir of their two bodies*; and a good replication.

Mo. 539. pl. 710. Trin. 39. Eliz. Digby v. Vernon.

It is a good plea in abatement that the plaintiff has *other ejectione firmæ pending* for the ſame land in the *Common Pleas*.

5 Rep. 105. Hil. 43 Eliz. C. B. Alden's caſe.

Ancient demeſne is a good plea.

In

In ejectment a man ſhall not give colour, becauſe the plaintiff ſhall be adjudged in by title. *Per tot. cur.*

Godb. 159. pl. 221. Mich. 7 Jac. B. R. Piggot v. Godden.

Concord with ſatisfaction is a good plea in ejectment.

Brownl. 133. Trin. 9 Jac. Pats v. Chitty.

Expiration *of the term* is no plea in *ejectione firmæ*. Per *Jermin*.

Lat. 206. Trin. 3 Car. Dale v. Penhaleriek.

In ejectment by *A.* againſt *B.* the court was moved for *C.* that he will ſave *B.* harmleſs, and prays that giving *B.* ſecurity to do ſo, *B.* may be *ordered by rule of court to plead as* C. *ſhould direct* B. and that *B.* be not ſuffered to confeſs a judgment. *Per Roll*, Ch. J. it is out of the way for you to give ſuch ſecurity, for there yet appeared no *colluſion*, but you ſhall be *made a party to defend the title*, and then move again.

Sty. 382. Paſch. 1653. Ricot v. St. John.

If judgment in ejectment be ſigned in a country cauſe, for *want of plea*, but no poſſeſſion delivered, a judge in his chamber, at any time before the aſſizes, may compel the plaintiff to accept a plea, but if poſſeſſion is delivered he is without remedy. *Per Holt*, Ch. J.

2 Salk. 516. pl. 9. Mich. 9 W. 3. B. R. Anon.

In

2 Ld Raym. Rep. 1418. Trin. 12 G. B. R. Goodright v. Saunhill.

In ejectment *plea of antient demeſne* was allowed to be well, *without an affidavit* to verify the fact, and ſuch plea had been before allowed to be good in Earl *Conningſby*'s caſe.

3 Le. 194. pl. 242. Mich. 29 Eliz. C. B. Anon.

A recovery in one ejectment is *a bar* in another. *Per Anderſon*, Ch. J. eſpecially (as *Periam*, J. ſaid) if the party relies on the eſtoppel.

D. 115. b. pl. 67. Marg. cites 29 Eliz. Baſkerville's caſe.

Declaration of a *park* containing 60 acres, and the jury find but of 30. Adjudged againſt the plaintiff for the whole. *N. B.* The park was a thing entire.

Mar. 59. pl. 92. Mich. 15 Car. Anon.

A bar *in one* ejectione firmæ *is* a bar *in another* for the ſame ejectment, but not for another or new ejectment.

Mod. 252. Trin. 29 Car. 2. C. B. Addiſon v. Otway.

If the *plaintiff dies* the court will ſuppoſe any other perſon of the ſame name to be the plaintiff, and they take notice judicially that the leſſor of the plaintiff is the perſon intereſted, and therefore they puniſh the plaintiff if he releaſe the action or the damages.

Pl. 2. cites 12 H. 4. 10.

If ejectment of ward be brought *againſt* two, and the *one dies*, yet the writ is good againſt

againſt the other, *per Thinn*, and *Hull* of the ſame opinion; for *this is in nature of treſpaſs*; *quod nota*; by which *Skrene*, who pleaded this matter, imparled. *Br. Ejectione*, &c.

Ejectione cuſtod. of land in E. the *defendant ſaid that the land is in* C. *and not in* E. Judgment of the writ, and plaintiff prayed leave to inquire a better writ. *Br. Ejectione*, &c. Pl 4 cites 14 H. 4. 16.

In *ejectione firmæ*, the *omiſſion* of this clauſe, *et bona et catalla querentis ad valen.* &c. is not material, and the writ is good without this clauſe. Thel. Dig. 94. lib. 10. cap 6 ſ. 17. cites Plowd. fo. 199. 228.

Leſſee for years brings an ejectione firmæ; *the leſſor being but tenant for life dies, pending the writ*; the writ does not abate. The plaintiff may have judgment, and a writ of execution. Jenk 293. pl. 38.

If an ejectment be brought *againſt two*, and *iſſue be joined*, and then *one of them dies*, and a *venire is awarded as to the two defendants, and a verdict againſt two*, yet, upon ſuggeſtion of the death of one of them upon the roll, the plaintiff ſhall have judgment for the whole againſt the other; Ld. Raym. Rep. 717. Hil. 13 W. 3. in caſe of Gee v. Rolle and Newell.

other; cites *Cro. J.* 330, 274. 2. *Keb.* 845. becauſe *this action is grounded* upon torts, which are ſeveral in their nature, and one may be found guilty, and the other acquitted, *per cur.*

CHAP. XIII.

Actual Entry.

3. Burr. 1895. Strange 1086. Barrington v. Parkhurſt. Hill 11. Geo. 2.

THERE muſt be an actual entry to avoid a fine, and the demiſe cannot be laid on a day before ſuch entry was made.

See Lilly's P. R. cont. Title Entry p. 429.

How actual entry to be made, where an ejectment is brought on a condition broken, as for non-payment of rent, *&c.*

3. Burr. 1895. Salk. 259.

Proof of actual entry and *ouſter* is not neceſſary.

CHAP. XIV.

Vacant Poſſeſſion.

WHEN a year's rent is in arrear, and no ſufficient diſtreſs on the premiſes, if the tenant deſerts the premiſes

premiſes, two juſtices may give the landlord poſſeſſion, according to the 11th of *Geo.* 2.

Where half a year's rent is in arrear, and no tenant in poſſeſſion of the premiſes; or in caſe declaration in ejectment cannot be ſerved, you may fix the ſame on the door or other notorious part of the premiſes, which will be good ſervice, by 4. *Geo.* 2. *c.* 28. MSS. notes.

Where a houſe is uninhabited, the landlord (or other perſon having a right to enter) muſt make a formal entry thereon, by going into the porch or ſome other part of the premiſes, and muſt there ſeal and deliver a leaſe to ſome perſon intended to be the plaintiff in ejectment, whom he muſt leave in poſſeſſion of the houſe, and then ſome other perſon intended to be the defendant, muſt enter and *ouſt* the leſſee; after which the leſſee muſt cauſe a declaration in ejectment to be delivered to the ejector, and he muſt be ſerved with rules to plead, when the rule to plead is out the court on affidavit of the whole matter will grant judgment. Salk. 255.

In *C. B.* you may ſign judgment, when the rule to plead is out without moving the court; but in *B. R.* you muſt move the court for judgment on an affidavit of the ſealing of the leaſe on the premiſes, and being *ouſted* by defendant.

Savage v. Dent. 10. Geo. 2.

The leſſee of a public-houſe took another, and removed his goods and family, but left beer in the cellar, and there being rent in arrear, the landlord ſealed a leaſe as in the caſe of a vacant poſſeſſion, delivered an ejectment and ſigned judgment, which was ſet aſide, the leſſee ſtill continuing in poſſeſſion; and a caſe was mentioned, where leaving hay in a barn was held to be keeping poſſeſſion. It further appeared that plaintiff's attorney knew where the leſſee was removed to, and might have ſerved him perſonally off the premiſes.

CHAP. XIV.

If Tenant does not appear.

IF tenant does not appear in the beginning of the term in which he had notice to appear, the perſon who ſerved the declaration muſt make an affidavit of the de-

delivery of a true copy of the declaration annexed to the affidavit.

This affidavit muſt be poſitive, that the perſon the declaration was delivered to was tenant in poſſeſſion, or, that he acknowledged himſelf to be ſo. Buller 95.

Towards the end of the term, generally on the laſt day, the declaration and affidavit are given to counſel, to move for judgment againſt the caſual ejector. The counſel does not move it in common caſes, but only ſigns the declaration, and gives it to the ſecondary in *C. B.* and to the clerk of the rules in *K. B.* who draw up rule for judgment, which is dated the laſt day of the term, and will be out in four days; and if the tenant does not appear in that time, then judgment is ſigned againſt the caſual ejector, and a writ of poſſeſſion iſſues.

Trinity term ending on *Wedneſday*, tenant has all *Monday* to appear in, and you cannot ſign judgment till the *Tueſday* following.

In *K. B.* you muſt move for judgment the ſame term tenant had notice to appear.

MSS. Caſe. In *C. B.* though declaration was delivered before *Eaſter* or *Michaelmas* term, plaintiff has all next iſſuable term to move for judgment, and if motion for judgment is made in *Eaſter* or *Michaelmas* term, the ſecondary will not make out the rule till the end of next iſſuable term, defendant having liberty till then to appear.

The day after the iſſuable term, the defendant again ſearches the ſecondaries book to ſee if ejectment has been moved, if ſo defendant then appears and pleads.

When the rule for judgment is out you ſearch *Prothonotary*'s plea book, for plea and rule, and if none filed you draw up rule for judgment with the ſecondary, and make an *incipiter* of the declaration on a five ſhilling ſtamp, and *Prothonotary* will ſign judgment, and then make out a writ of poſſeſſion.

Biller 94.
2. Burr. 757 In caſe tenant refuſes to appear, judgment ſhall be ſigned againſt caſual ejector, but on the landlord's entring into the rule to confeſs leaſe, entry, and *ouſter*, you cannot take out execution on that judgment till you have an order from the court

court on a ſpecial motion for that purpoſe. *Vide* 11. *Geo.* 2. *c.* 19.

CHAP. XV.

How to appear.

IF the tenant defends the action he muſt ſign a warrant to impower an attorney to appear for him; the attorney ſends the copy of the declaration to the agent, who gets a blank rule from the ſecondary, to confeſs leaſe *&c.* and ingroſſes the general iſſue not guilty, and annexes the rule to it, then he enters an appearance with the filazer of the county, who ſtamps the rule and writes upon it "appearance entred," then the plea and rule are left at the *Prothonotories*, or delivered to the plaintiff's agent.

Baron Gilbert's Law. Eject. 16.

The defendant's attorney draws up the rule to confeſs leaſe, *&c.* and it is often drawn up in general terms (*viz.*) that *J. H.* who claims title to the premiſes in queſtion, in his poſſeſſion ſhould be admitted *&c.* this puts a neceſſity on the plaintiff at the aſſizes, to diſtinguiſh by proof what tenements are each defendant's poſſeſſion, or he can have no verdict againſt him, conſequently no judgment.

Lilly P. R. 499. 1. Keb. 677.

Or the rule may be drawn ſpecially that *J. H.* who claims title to ſuch lands (expreſſing them particularly) ſhould be admitted defendant, and that ſuperſedes the neceſſity of proof, that the lands are in his poſſeſſion, and if defendant's attorney will not give a note of the particulars of the land for which he was admitted a defendant, plaintiff may ſummon him before a judge, who will order the rule thus ſpecially to be drawn up, in caſe the party in poſſeſſion will admit himſelf to be defendant, but becauſe defendant's attorney is to draw up the rule, it being entred into by his conſent, it is often drawn up in general terms, which puts plaintiff to his proof, at the aſſizes, for though the rule for judgement againſt the caſual ejector be drawn up by the plaintiff, yet that is only for judgment againſt ſuch ejector, in caſe the tenant in poſſeſſion does not enter into the common rule by a limited time, which puts it upon defendant to draw up the common rule, who is to draw it up and leave it at the judge's chambers, giving notice of it to plaintiff's attorney.

If defendant enters into the common rule to confeſs &c. for ſo much of the tene-

ments

ments as are in his poſſeſſion, defendant's attorney muſt forthwith give plaintiff's attorney notice in writing, of the tenements ſo in his poſſeſſion.

If a perſon claims title to premiſes which he would defend, and is not in poſſeſſion of them, he muſt move the court on an affidavit of the facts, to be made defendant inſtead of the nominal defendant, but this muſt be with the conſent of the tenant in poſſeſſion, unleſs ſuch perſon is landlord of the premiſes.

Any perſon claiming an intereſt in the premiſes may be admitted defendant with or without the tenant. **Fairclaim v. Shamtitle. Burr. Rep.**

And the court ſeemed to deny the caſe in *Barnes*'s notes.

In another caſe Lord *Mansfield* ſaid that when a perſon applied to be made defendant in the room of the tenant, it was not neceſſary that he ſhould be the actual landlord, it was ſufficient if he had a privity of intereſt in the lands, and that where the diſpute was between deviſee and an heir at law, the court always directed an iſſue to try the matter at law. MSS. Caſe 1772.

See 3. Blackstone tit. ejectment.

If the perſon who is made defendant in the room of the caſual ejector, does not appear at the trial and confeſs leaſe, &c. the plaintiff muſt be nonſuited for not being able to prove his declaration; but judgment will in the end be entred againſt the caſual ejector, the condition of the rule to confeſs &c. being broken. *

CHAP XVI.

Conſolidating Ejectments.

1. Barnes 119.

WHERE there are ſixteen ejectments for divers meſſuages, and they are word for word the ſame, the court will conſolidate them; but if each declaration had been for one meſſuage only, the plaintiff might have tried them ſeparately.

MSS. Caſe.

The court on motion, or a judge at his chambers, will conſolidate two ejectments, brought

* An attachment lies for non performance of rules made by aſſent of parties, as for all other rules of court, that are diſobeyed, and this is all the remedy the parties on both ſides have for their coſts.

brought for the ſame premiſes, and under the ſame title.

CHAP. XVII.

Verdict.

EJECTIONE firmæ; the plaintiff *in ejectment declared for* 100 *acres of* land, and *in evidence ſhewed a leaſe of* 40 *acres only*; it was held to be good for ſo much as was comprized in the leaſe, and for the reſidue, that the jury might find the defendant Not guilty. Cro. E. 13. pl. 4. Hil. 25 Eliz. C. B. Guy v. Rand.

In ejectment, *ſuppoſing the ejectment of ten acres*, and the *jury find the circumſtance but of four acres*, the plaintiff recovered thoſe four acres. D. 115. ſb. Marg. pl. 67. cites it as adjudged Trin. 43 Eliz. B. R. Meredith v. Brown.

In ejectment, the plaintiff declared on *a leaſe of a meſſuage, ten acres of land, twenty acres of meadow, twenty acres of paſture, by the name of one meſſuage, and ten acres of meadow, (more or leſs)* and upon Not guilty pleaded had a verdict, but *nil capiat per billam* entered, becauſe on the matter diſcloſed by the plaintiff himſelf in the declaration, he cannot have his execution of the quantity found by the verdict; Yelv. 166. Mich. 7 Jac. B. R. Anon.

dict; for in the leaſe there are only ten acres demiſed, and thoſe words (more or leſs) cannot in judgment of law extend to thirty or forty acres, it being impoſſible by common intendment, and the rather becauſe the land demanded by the declaration is of another nature than what is mentioned in the *per nomen*, which goes only to the meadow, and the declaration to the arable land or paſture.

Sid. 209. pl. 26. Mich. 16 Car. 2. B. R. Ablet v. Skinner.

The declaration was of a fourth part of a fifth part in five parts to be divided, and the title of the plaintiff upon the evidence was only of the third part of the fourth part of the fifth part into five parts to be divided, which is only a third part of that which is demanded in the declaration, and it was ſaid, that the plaintiff could not have verdict, becauſe the verdict in ſuch caſe ought to agree with the declaration. But *per cur. the verdict may be taken according to the title*, and ſo it was.

CHAP. XVIII.

Judgment.

Gilbert's Ejectment p. 24.

WHERE a defendant doth not confeſs leaſe, *&c.* at the trial the *poſtea* is indorſed, that the nonſuit was for want

want of confeſſing leaſe, entry, and ouſter, but it does not appear that the defendant has not complied with the rule till after the aſſizes, at which the cauſe was to have been tried; and therefore the judgment againſt the caſual ejector cannot be entered till the next term after ſuch aſſizes.

So if the declaration is delivered at any time after the *Eſſoin* day of *Hilary* term, the tenant may plead, and let the cauſe go to the aſſizes, and by that means keep poſſeſſion till *Michaelmas* term.

Where a plaintiff obtains judgment againſt a landlord, who was made defendant in the room of the caſual ejector, he muſt move court for a rule for leave to take out execution againſt the caſual ejector, and the day for ſhewing cauſe againſt that rule is the proper time for the landlord to make his ſtand againſt the plaintiff's taking out execution, by ſhewing a writ of error, *&c.* as cauſe if he omits that opportunity he cannot get the writ of poſſeſſion ſet aſide. 2 Burr. 757.

Judgment was forthwith given, becauſe the *leaſe determined the ſame day*, and execution awarded immediately. Cro. J. 227. pl. 1. Mich. 7 Jac. B. R. Underhill v. Kelſey.

If

Rol. Rep. 386. pl. 6. Trin. 14 Jac. B. R. Cooper v. Franklyn.

If one coparcener brings ejectment *for the whole*, the judgment ſhall be for the whole.

Sty. 346. Mich. 1652. Acton v. Ayres.

Judgment in ejectment in *C. B.* was *quod querens recuperet*, and the words *quod defendens capiatur* are omitted, and on this exception judgment was reverſed, for they ſaid in this judgment, ſo entered, there is no return of damages, nor a *capiatur*, and ſo the King is cozened of the fine, and the defendant barred of bringing his writ of error.

2 Show. 249 pl. 253. Mich. 34 Car. 2. B. R. Bouchier v. Friend.

In caſe of judgment againſt the caſual ejector, there ought to be a *latitat* ſued out againſt, and common bail filed for the *caſual ejector*, and *judgment* was ſet aſide for want of it.

Comb. 102. Paſch. 1 W. & M. B. R. Anon.

Affidavit of the delivery of a copy of a declaration in ejectment to *A.* and *B. tenants* in poſſeſſion of the premiſes, or of part thereof. Ruled, that there ſhould be *judgment for ſo much* as was in their poſſeſſion.

7 Mod. 150. Hil. 1 Ann. B. R. Anon.

To have *judgment* ſigned *againſt the caſual ejector* all things muſt be very fair on the plaintiff's ſide; for the defendant loſes his

his poſſeſſion by a fictitious proceeding. *Per cur.*

Ejectment to recover the poſſeſſion of the *Quakers meeting-houſe*. None of them would receive the declaration, and the houſe was open only on *Sundays*, and delivery is not good on that day, ſo the plaintiff took a *judgment by confeſſion of the nominal leſſee*; but it was ſet aſide, becauſe it cannot be entered on his confeſſion, which in fact is the confeſſion of the plaintiff himſelf.

8 Mod. 109. Mich. 9 Geo. Cooper v. Beale.

If *tenant in poſſeſſion appears and pleads*, and afterwards *withdraws* his plea, and *confeſſes judgment*, the plaintiff may enter judgment againſt the tenant in poſſeſſion, *per tot. cur.* But whether he may in this caſe enter it againſt the caſual ejector the court was divided; *adjornatur.*

8 Mod. 118. Hil. 9 Geo. Smith v. Jones.

Error in *cam. ſcacc.* will not lie upon a *judgment* in ejectment *againſt the caſual ejector.*

8 Mod. 118. Hil. 9 Geo. Smith v. Jones.

Judgment was in ejectment *of two ſeveral demiſes of two ſeveral tenements*, and the entry was *quod recuperet terminum ſuum in tenementum prædicta.* It was urged that it

Gibb. 83. pl. 11. Trin. 2 & 3 Geo. 2. B. R. Anon.

it ſhould be taken *reddendo ſingula ſingulis.* But if the plaintiff had two ſeveral terms in one and the ſame land, then poſſibly the judgment might not be right; and the judgment was affirmed.

Pl. 13. cites 30 E. 3. 11.

In writ of *ejectione cuſtodiæ*, the plaintiff ſhall not have judgment to recover *the ward and damages, where the heir is within age, but* to recover *all in damages, and ſhall have ſeiſin of the land*; but at this day he ſhall recover poſſeſſion of the land. *Br. Ejectione.*

Sav. 28. pl. 66. Trin. 24 Eliz. Booth v. Ld. Cromwell.

In ejectment *of a term for years*, the *term expired before judgment given.* Though the plaintiff cannot have judgment to recover the land, yet he ſhall have *judgment of damages*, but otherwiſe it is in actions where franktenement is to be recovered; and the plaintiff had judgment.

3 Le. 194. pl. 242. Mich. 29 Eliz. C. B. Anon.

By a recovery in an ejectment the *poſſeſſion is bound.*

D. 115. b. pl. 67. Marg. cites 43 Eliz. Meredith v. Brown.

Ejectment for *ten* acres, and the jury find but of *four*, plaintiff ſhall recover the four acres.

Lat. 62, 63. Paſch. 1 Car. Hems v. Stroud.

A. ſeiſed of land, purchaſes a houſe and other land, and pulls down the houſe, and

and builds it ſix feet bigger, which ſix feet is *upon his own land*, though the demandant has title but to part of the houſe, part only being on the land demanded, yet judgment was ſo that he ſhall recover the houſe.

If *tenant in common* ſeals a leaſe in ejectment, he ſhall recover but a moiety. *Per Hale*, Ch. J.

Mod. 102. pl. 9. Mich. 25 Car. 2. B. R. Anon.

Ejectment for an acre of land in *D.* and *S.* and it *lies only in* D. yet plaintiff ſhall recover; if it be for an acre in *D.* and *part of it lies in* S. he ſhall recover what lies in *D.* if *for a whole acre, and he has title only to the fourth part*, he ſhall recover the fourth part. Argued, and not denied by the court.

3 Lev. 334. Trin. 4 W. & M. in C. B. Goodwin v. Blackman.

Holt, Ch. J. ſaid, that it was held in this court, in the caſe of *Badger* v. *Lloyd*, that the *plaintiff might enter, pending the writ of error upon the judgment in ejectment, if he could find the poſſeſſion empty*. For the writ of error binds the court, but not the right of the party; but he muſt take care that he do not enter with force.

2 Ld. Raym. Rep. 808. Mich. 1 Ann.

Judg-

L. P. R. 85. cites Trin. 4 W. & M.

Judgments in ejectment againſt caſual ejectors for want of an appearance, ſhall be ſet aſide, and reſtitution granted, if no *latitat* hath been ſued out againſt, *nor common bail filed* for ſuch caſual ejector, or nominal defendant, *within fourteen days after ſuch appearance.* Per cur.

12 Mod. 211. Mich. 10 W. 3. Anon.

If notice in ejectment be *given to an undertenant*, and he does *not acquaint his landlord therewith*, but ſuffers judgment to go againſt him, the court upon motion will not ſuffer execution to be taken out till the right be tried.

12 Mod. 655. Hil. 13 W. 3. in caſe of Greev. Rolle.

If judgment be againſt the caſual ejector, and it be made appear that *no declaration* was *rightly ſerved*, the court will ſet it aſide. And if at common law an ejectment had been againſt one that had nothing in the land, and upon judgment againſt him another is turned out of poſſeſſion, there is no remedy for the right owner, but treſpaſs, or a writ of diſceit, and this ſtill is all the certainty a man has of his poſſeſſion, and now all we can do is to ſet ſuch recovery aſide, and to puniſh the offender. *Per Holt*, Ch. J.

But

But upon *affidavit that defendant was a ſoldier*, and ſo intitled to *protection* by law, it was ordered that he ſhould *give ſecurity for payment* of the rent for the future. 10 Mod. 383. Hil. 3 G. 1. B. R. Smith v. Parkes.

The court uſually ſtays proceedings in ejectment on reaſonable terms, at any time before execution executed; and where the ejectment was for *non-payment of rent*, the plaintiff had judgment, but the proceedings were ſtayed on bringing in the rent and coſts within three days. 8 Mod. 345. Hil. 11 Geo. Philips v. Doelittle.

CHAP. XIX.

Writ of Error.

IN ejectment the plaintiff declared of a *leaſe of the fourth part of an houſe in* N. *in four parts to be divided, by force of which he entered into a tenement, parcel' prædict' and was inde poſſeſſionatus till the defendant did eject him de tenementis prædict.* whereas he ought to ſuppoſe the entry in the fourth part, and the ejectment of the fourth part, the court ſaid, *de tenementis prædict'* ſhall not be intended the whole tenement, but of the fourth part; and the judgment affirmed. Cro. E. 286. pl. 3. 34 Eliz. B. R. Rawſon v. Maynard.

Sty. 109. Trin. 24 Car. Glede v. Dadeney.

A writ of error may be brought before the writ of inquiry be returned in an ejectment, for in that action the judgment is complete at the common law before it be returned; for the judgment is but to gain poſſeſſion, and ſo it is in dower; but otherwiſe in treſpaſs, where damages only are to be recovered, for in ſuch caſe the judgment is not perfect till the writ of inquiry is returned, nor can be made up before, as in the principal caſe it may. *Per Roll*, Ch. J.

Sty. 238. Mich. 1650. Lumley v. Nevil.

In an *ejectione firmæ*, if the writ of *habere facias poſſeſſionem contains more acres of land than* are *expreſſed in the declaration*, it is error. *Per Roll*, Ch. J.

4, 16, *and* 17 *Car.* 2. *cap.* 8. *ſ.* 3, 4. *Execution ſhall not be ſtayed by writ of error upon any judgment after verdict in* ejectione firmæ, *unleſs the plaintiff in ſuch writ become* bound to the defendant in ſuch a ſum as the court *to whom the writ is directed ſhall think fit, that if the judgment be affirmed, or the writ diſcontinued, in his* default, *or he be* nonſuit, *he will pay ſuch damages, and ſums of money, to aſcertain which* a writ of enquiry *ſhall iſſue, to inquire of the meſne profits, and damages by waſte,*

waſte, done after the firſt judgment as ſhall be awarded, and coſts of ſuit.

A. had judgment in ejectment in *C. B.* and *execution of his damages and coſts.* *B.* brings error, and the judgment is affirmed: whereupon *A.* prays his *coſts for his delay and charges*, but could not have them; for no coſts were in ſuch caſe at common law, and the ſtatute 3 *H.* 7. 10. gives coſts only where error is brought in delay of execution. So 19 *H.* 7. 20. and here, though he had not execution of the term, yet he had it of his coſts. Vent. 88. Trin. 22 Car. 2 B. R. Foot v. Berkley.

After a recovery in ejectment the bringing a writ of error is *no bar to* an action of *treſpaſs for the meſne profits*, but that it may be brought pending ſuch writ of error. 12 Mod. 138. Mich. 9 W. 3. Donford v. Ellis.

CHAP. XX.

Writ of Poſſeſſion.

ON executing the writ of poſſeſſion the plaintiff is to ſhew the ſheriff where the lands lie, and is to take poſſeſſion at his peril of only what he hath title to; if he takes more than he has title to, 1 Burn 629.

the court will in a ſummary way ſet it right.

5 Co. 91, 6. The words of the writ are *quod habere facias poſſeſſionem*; ſo that there muſt be a full and actual poſſeſſion given by the ſheriff, and conſequently all power neceſſary for this end muſt be given him; and therefore if the recovery be of a houſe, the ſheriff may juſtify breaking open the door, if he be denied entrance by the tenant.

1 Rol. Abr. 886. If the plaintiff recovers ſeveral meſſuages in the poſſeſſion of different perſons, the ſheriff muſt go to each houſe, and deliver the poſſeſſion thereof, and this is done by turning the tenants out of each of the houſes; for the delivery of poſſeſſion of one meſſuage in the name of all is not a good execution of the writ, becauſe the poſſeſſion of one tenant is not the poſſeſſion of the other, but each hath his ſeveral poſſeſſion.

1 Rol. Abr. 886. But it ſeems by *Roll*, that if all the meſſuages had been in poſſeſſion of one tenant, it had been ſufficient to give poſſeſſion of one in the name of all, but the beſt way is, for the ſheriff to remove all the

the tenants out of each houſe, and when the poſſeſſion is quitted, to deliver it to the plaintiff.

If the ſheriff thruſts out all perſons he can find, and gives plaintiff, as he thinks, quiet poſſeſſion, and after the ſheriff is gone there appears ſome perſons to be lurking in the houſe, this is no good execution, and therefore plaintiff ſhall have a new *habere facias*. 1 Lev. 145. Upton v. Wells.

Where the recovery is of land, and more was demanded than recovered, as if the demand had been for 500 acres, and verdict and judgment only for 100 acres, it ſeems doubtful how the ſheriff is to give execution. 1 Rol. Abr. 885.

Roll ſays it is ſufficient to give plaintiff poſſeſſion of two or three acres, in the name of the whole, and this indeed ſeems the ſafeſt way for the ſheriff, becauſe he does at his peril execute the writ; and if he gives poſſeſſion of any land not recovered, and not in the *habere facias poſſeſſionem*, he is a treſpaſſer, and ſhall be puniſhed in an action of treſpaſs. But in regard the *habere facias* is to give plaintiff the benefit of his judgment, and that cannot be done

without an actual poſſeſſion be given of the whole quantity. It has been held by others that the ſheriff does not diſcharge his duty by giving one acre in the name of all, but he ought in ſuch caſe to ſet forth all the acres in particular; for to have it otherwiſe would be to leave the execution uncertain, and conſequently not to give plaintiff the full benefit of his judgment.

At this day the practice is, for the plaintiff to give the ſheriff ſecurity to indemnify him from the defendant, and then the ſheriff to give execution of what the plaintiff demands.

1 Rol. Rep. 420.

If the execution goes to the ſheriff for 20 acres, it ſeems the ſheriff muſt give 20 acres according to the common eſtimation of the county where the lands lie.

Lily's P. R. 381.

On judgment by default, plaintiff executed a writ of poſſeſſion, and turned out the tenant, the tenant was re-admitted, then a ſtranger brings an ejectment, and the tenant attorns to him, then the firſt plaintiff ſues out another writ of poſſeſſion; but this was ſet aſide, becauſe the plaintiff might have kept poſſeſſion on his

firſt

firſt writ of poſſeſſion, under which he had the full effect of his judgment.

The party who recovered the poſſeſſion of the premiſes in ejectment, having ſold the goods, the court ordered that it ſhould be referred to the prothonotary, to take an account of the goods by examination of witneſſes, *&c.* and that the party who ſold the goods ſhould pay the value thereof to the tenant of the premiſes. C. B Hil. 1775

CHAP. XXI.

Coſts.

THE practice of granting, a rule to ſtay the proceedings in an ejectment brought on the demiſe of an infant until a reſponſible plaintiff be named, or till ſecurity be given for payment of coſts, in caſe defendant ſhall become intituled to any, was firſt introduced into *K. B.* and has ſince been adopted in *C. B.* 2. Barnes 149.

If the perſon who is made defendant in the room of the caſual ejector fails to appear at the trial, and to confeſs leaſe, *&c.* the plaintiff muſt be nonſuited thereby, not being able to prove thoſe requiſites

ſites, but judgment will in the end be entred againſt the caſual ejector, for the condition on which the tenant was admitted defendant, is broken, and therefore the plaintiff is put again in the ſame ſituation as if he never had appeared at all.

If at the trial the defendant will not appear and confeſs leaſe, *&c.* the courſe is to call the defendant to confeſs leaſe, *&c.* and then to call the plaintiff himſelf and nonſuit him, and then on the return of the *poſtea*, judgment will be given againſt the caſual ejector.

Salk. 259. Buller 96. Lily's P. R. 382.

The rule for confeſſing leaſe, *&c.* muſt be carried to the prothonotary, who taxes coſts upon it, then ſerve copy of the ſame with prothonotary's allocator, and demand the coſts taxed thereon of defendant, and on his refuſing to pay the ſame, the court on affidavit will grant an attachment, which cannot be purged till he has paid coſts.

In ejectment, if the verdict goes for the defendant, or plaintiff is nonſuited on any other cauſe than defendant's not confeſſing leaſe entry and ouſter, defendant muſt

get

get the *poſtea* ſtampt, and tax coſts thereon, as in another action; he muſt ſue out *ca. ſa.* againſt plaintiff, and on ſhewing the writ under ſeal to plaintiff's leſſor, and ſerving him with copy of conſent rule, and demanding coſts, and if he does not pay ſame, court on motion will grant an attachment againſt him.

Where verdict is for the plaintiff a writ of poſſeſſion iſſues, and a *fi. fa.* for the coſts.

The attachment lies for non-performance of the conſent rule, and this is all the remedy which the parties on both ſides have for their coſts. Gilbert's Ejectments p. 16. See note ch. 15.

If tenant appears and does not recover or ſuffer judgment to go againſt him, by default, in ſuch caſe he is liable to the coſts of the ejectment, according to the condition of the rule, which he entered into when he was made defendant, but if the tenant does not appear at all, the landlord by virtue of the ejectment can have no remedy againſt him for coſts. *Per Cur.* C. B. 1772.

But in an action for the meſne profits, the coſts of the ejectment may be included. Buller 88.

Gilbert's Ejectment 26.

The plaintiff in ejectment, though he is but nominal, yet if he be not found, or if he is not able to pay the coſts, the attorney is liable, and may be committed till he pays them.

1 Barnes. 121. 2. Barnes 149.

If an infant delivers a declaration to defendant, ſome guardian muſt be ſet up as plaintiff, to anſwer the defendants coſts.

Mich. 6. Geo. 2. Tilly and Baily.

The plaintiff was nonſuited upon evidence in ejectment, and inſtead of taxing coſts upon the rule, which is the uſual way, the coſts were taxed upon the *poſtea*; the defendant took out a *ca. ſa.* againſt the plaintiff and had it returned *non eſt invent.* and upon affidavit that he demanded the coſts of the leſſor of the plaintiff, the court granted a rule for the leſſor of the plaintiff, to ſhew cauſe why he ſhould not pay the defendant the coſts taxed upon the *poſtea*.

Birchman and Nought. MSS. ſee L. H. 56.

In an ejectment by an infant, motion was made for a rule to compel the leſſor of the plaintiff to make a real leſſee, who muſt be reſponſible, or to give ſecurity for payment of the coſts. The rule was granted.

Motion

Motion *per Strange*, that a good plaintiff may be named in an ejectment, the leſſor being an infant of two years old, upon an affidavit upon two reaſons, 1ſt upon the reaſon of the thing, that defendant may not go down to trial, and nobody to anſwer his coſts, and compared it to the caſe of a common informer; 2d becauſe of a precedent in the like caſe, 12 *Geo.* 1. *Noke* and *Wyndham* on the motion of juſtice *Probyn*. Throgmorton and Smith.

Abney oppoſed the motion, and ſaid an infant may make a leaſe to confeſs. 2. Leon 217. 3. Keb. 247.

As to the caſe of the common informer, that does not hold, for that is only to give a note of the place of his abode.

Juſtice *Lee*, as to the caſe of *Noke* and *Wyndham*, he ſaid that was by conſent, the father of the infant ſhould be made leſſor of the plaintiff, upon the court's then declaring that a good leſſee ought to be named.

Chief juſtice ſaid that it was not reaſonable that a good leſſor ought to be named in this caſe, and that they had as much power over ejectments, as other actions.

actions. Rule abſolute unleſs cauſe to-morrow.

Pickfoot v. Doe on the demiſe of Harman B R.

Plaintiff in *Trinity* vacation, delivers a declaration in ejectment, with notice to appear in *Michaelmas* term, to which defendant appeared, pleaded the general iſſue, and entred into the rule to confeſs leaſe, entry, and ouſter; plaintiff did not join iſſue, being adviſed that the declaration ſhould have been laid with a double demiſe, and in *Michaelmas* vacation delivers another declaration, with notice to appear in *Hilary* term; defendant did not appear to the laſt declaration, but moved the court that plaintiff might pay him his coſts for appearing *&c.* to the firſt declaration, before he ſhould be at liberty to proceed on the ſecond. *Per Cur.* iſſue not being joined or delivered, the plaintiff is not obliged to pay defendant his coſts in the firſt action, but may proceed in the ſecond.

1. Barnes 101. Shendler and Roberts.

In an action for the penalty inflicted for having acted as a commiſſioner of the land-tax, not being qualified, the court of *C. B.* was moved, that proceedings might be ſtayed till ſecurity was given for payment of coſts, in caſe defendant ſhould event-

eventually be entitled to them — no rule — the plaintiff has a right to bring his action.

After a former ejectment brought in *K. B.* and defendant's costs taxed, a new ejectment was brought in *C. B.* defendant obtained a rule to shew cause why proceedings should not be staid till after payment of costs in the former ejectment, which was made absolute. The courts of *Westminster-hall* consider a former ejectment in another court, as they do a former ejectment in the same court. See *Salk.* 255.

2. Barnes 107. Holdfast on the demise of Hatterfly v. Jackson.

Solicitor and agents in ejectment, were committed *till they found a plaintiff able* to pay the costs, or pay the costs themselves. 2. *Lev.* 66. 24. *Car.* 2. *B. R. Henloe* and *Peters.*

It is a great abuse in ejectments that people make *nominal lessees*, whereby defendant may lose his costs & *per omnes* the attorney that does so, ought to pay costs, and an attorney was put to answer interrogatories for such practice. *Per Cur.* 6. *Mod.* 309. *M.* 3. *Ann. B. R. Anon.*

An

Cuſack v. Jones and Hill. Sayer's Coſts 125.

An ejectment being brought on the demiſe of a perſon who reſided in the iſland of *Antigua*, the court was moved, that the proceedings might be ſtaid until ſecurity be given for the payment of coſts, in caſe the defendant ſhall become entitled to any. The court had ſome doubt whether a rule of this kind could be granted, even in an ejectment, except the leſſor of the plaintiff was an infant; but a rule to ſhew cauſe was granted, to which no cauſe being ſhewn, was afterwards made abſolute.

Price v. Corbin. Sayer's Coſts 126.

An action for the meſne profits of certain premiſes, being brought in the name of the nominal plaintiff in an ejectment, which had been brought for the ſame premiſes; the court granted a rule for ſtaying the proceedings, until ſecurity was given for payment of coſts, in caſe the defendant ſhould become intitled to any.

Real & al. v. Macky. Str, 1206.

In an action of aſſumpſit, brought by a *Swede* for money due for freight, the court was moved that proceedings might be ſtaid, till ſecurity was given for payment of coſts, in caſe defendant ſhould be intitled to any. Court would not grant a rule, but ſaid the compelling a foreigner to give ſuch

ſecurity

ſecurity might affect trade, by ſhutting up our courts againſt them.

CHAP. XXII.

New Trial.

A New trial may be granted in ejectments, as well as in other actions.

But the practice is to bring a new ejectment, on payment of the coſts of the former.

Where a ſecond ejectment was brought, Lord *Mansfield* ſaid, the coſts of the firſt muſt be paid by plaintiff before the ſecond could be tried; that the verdict of the firſt ejectment ſtood till the coſts were paid.

Mr. *Wallace* ſaid, the coſts of the firſt ejectment muſt be paid before they could give notice to try the ſecond, otherwiſe the defendant muſt come with his witneſſes to the aſſizes, before he knew whether the matter could be tried or not. MSS. Caſe K. B.

If the plaintiff who has title is caſt at the firſt trial, if he brings it about again,

again, his beſt way is to lay the demiſe to the plaintiff, to bear date before the demiſe in the former action, (if he had then a title) and declare, that the ſame day *intravit & ejecit*, and by this means, if he recovers, he may bring an action afterwards for the meſne profits, and recover from the day of the demiſe, whereby he will reimburſe himſelf of what meſne profits were recovered againſt him on the former trial, and he has no other way for it.

CHAP. XXIII.

Meſne Profits.

1 Lily's P. R. cont. 378.

AFTER a recovery in ejectment by verdict, or by default, an action may be brought for the meſne profits from the time of the defendant's entry laid in the declaration.

Buller 88.

And in this action the coſts of the ejectment may be recovered by way of conſequential damages, by a ſpecial count for that purpoſe.

Aſlin v. Parker. 2 Bur. 665.

The action for the meſne profits may be brought by the leſſor of the plaintiff, in

in his own name, or in the name of the nominal leſſee, and there is no diſtinction between a judgment or a verdict, or a judgment by default.

In treſpaſs for the meſne profits againſt the tenant in poſſeſſion, either by the leſſor or the nominal plaintiff, after a recovery in ejectment the plaintiff need not prove a title. But it is ſufficient to produce the judgment in ejectment, or an examined copy of it, and the writ of poſſeſſion with the return of execution, and to prove the defendant's occupation, and the value of the profits, and thereupon he ſhall recover from the time of the demiſe laid in the declaration. **Buller 86.**

The tenant is concluded by the judgment in ejectment, and cannot controvert the plaintiff's title, nor his poſſeſſion, which is part of his title. The judgment proves nothing beyond the time laid in the demiſe, becauſe beyond that time the plaintiff has alledged no title, nor could be put to prove any. **Aſlin v. Parker.**

The judgment proves nothing as to the value of the premiſes, nor how long the **Id.**

defendant enjoyed them; therefore that muſt be proved in the action for the meſne profits.

Buller 86. 1 Lily's P. R. 378.

Where the judgment in ejectment is againſt the tenant, you need not prove the writ of poſſeſſion; for the tenant has confeſſed leaſe, *&c.* But where the judgment is againſt the caſual ejector, the leſſor cannot maintain treſpaſs without an actual entry, and therefore ought to prove the writ of poſſeſſion.

An action was brought for the meſne profits of a houſe in *London*.

The evidence produced at the trial was an examined copy of the judgment, the writ of poſſeſſion, and the return thereof, and the bill of coſts of the ejectment, as taxed. It appeared, that notice was given the tenant to quit at *Lady-day*, that the tenant did not quit according to the notice on which an ejectment was brought. That in *May*, the night before the judgment in ejectment was ſigned, the tenant tendred the key of the houſe to the landlord, and was never after in poſſeſſion; the landlord would not take the key, unleſs the tenant would

would pay all the coſts then incurred, which he refuſed to do, and then a writ of poſſeſſion was ſued out.

Mr. *Mansfield*, for the tenant, inſiſted, that as his client had quitted poſſeſſion before the writ of poſſeſſion was ſued out, the writ was unneceſſary, and that the coſts of that writ, and the ſheriff's fees for poundage, *&c.* ought not to be included in this action.

Mr. *Wallace*, for plaintiff. If you would recover at law, you muſt proceed according to law. Therefore the writ of poſſeſſion was properly iſſued out; but if the landlord had taken poſſeſſion under an agreement, I think it would have been a waiver of his right to recover according to law.

Lord *Mansfield* was of opinion, that the writ of poſſeſſion was neceſſary, in order for the plaintiff to have the full effect of his judgment, and that the coſts of that writ, as well as the coſts of the ejectment, and the rent from *Lady-day* to the time of the plaintiff's getting poſſeſſion, was well and properly claimed. K. B. Sittings after Trin. term, 1773.

CHAP. XXIV.

Twenty Years Poſſeſſion.

1 Bur. Rep. 119.

TWENTY years adverſe poſſeſſion is a poſitive title to the defendant, it is not a bar to the actions of the plaintiff only, but takes away his right of poſſeſſion.

Bur. Settlem. Caſes 451. Said by Judge Wilmot.

A twenty years enjoyment, and continuance, even upon a poſſeſſion by wrong, gives a legal title upon an ejectment, even againſt the rightful owner.

Bur. Settlem. Caſes 451.

It is not material how the pauper came into poſſeſſion, for twenty years poſſeſſion alone will *give* him a ſettlement, twenty years poſſeſſion is ſufficient either to defend or even to make a title in ejectment, ſo determined in *Aſhbrittle* v. *Willey*. 1 *Strange* 609. ſaid by Judge *Denniſon*.

Bur. Settlem. Caſes 451.

In ejectment twenty years poſſeſſion will either make or defend a title. The pauper had acquired a poſitive right by twenty years poſſeſſion, which is much more than a mere negative right or bar; it is ſuch a a poſi-

poſitive right as would have ſufficed to ſupport an action; he might have brought an ejectment on a twenty years poſſeſſion: by Lord *Mansfield*.

If *A.* has had poſſeſſion of lands for twenty years, without interruption, and then *B.* gets poſſeſſion, on which *A.* is put to his ejectment, though *A.* is plaintiff, yet the poſſeſſion of twenty years ſhall be a good title in him, as if he had ſtill been in poſſeſſion; becauſe a poſſeſſion of twenty years is like a deſcent, which tells an entry, and gives a right of poſſeſſion, which is ſufficient to maintain an ejectment. 2 Salk 421.

If the father had taken a piece of ground of the waſte, and had enjoyed it above twenty years, ſo as to prevent the lord's title by ejectment, and then the ſon had built upon it, this would have been the father's eſtate, and the poſſeſſion of the ſon would have been the poſſeſſion of the father.

Said by Lord *Mansfield*, on an action brought againſt the ſon as heir, on a bond entered into by the father.

Twenty years poſſeſſion is a technical, artificial title.

By *De Grey*, Ch. Juſt. *MSS.*

CHAP. XXV.

Rules.

Brownl. 129. Trin. 13 Jac. Beaumont v. Coke.

EXCEPTION taken in ejectment, becauſe the original bore teſte the ſame day the ejectment was made, and held good *per tot. cur.*

Comb. 68. Mich. 3 Jac. 2. B. R. Cart. v. Mogg.

Fifteen days between teſte and return need not be in a *ſcire facias* on a judgment in ejectment, becauſe an ejectment is a mixed action.

Comb. 74. Hil. 3 & 4 Jac. 2. B. R.

In caſe of ejectment, it is always denied to amend the memorandum. *Per Thomſon.*

Carth. 178. Hil. 2 & 3 W. & M. B. R. Bennet v. Gandy.

The demiſe being laid before the leſſor of the plaintiff had any title, the court was moved for leave to amend the declaration, and alter the time of the demiſe, *ſed non allocatur*; for the altering the time will make it a new demiſe. 2 & 3 *W. & M.* in *B. R. Bennet* v. *Gandy.*

But

But where a demiſe was made by the rectors and ſcholars of *Exeter* college generally, which was to try the right of the rectorſhip, but which could not be done upon that declaration, and ſo not good, it was ordered, upon motion, *to alter the demiſe* in the declaration, *and lay it to be made by* Painter, *rector of* Exeter, *and the ſcholars of the ſame.* Carth. 180. Hil. 2 & 3 W. & M. B. R. Philips v. Bury.

And where a judgment in ejectment was by confeſſion, an amendment of the time of the demiſe was made in the declaration cited, *Carth.* 401. *Paſch.* 9 *W.* 3. *B. R.* as the caſe of *Parr* v. *Cawley.* But that being a judgment by *conſent of parties,* was held no authority of the principal caſe of *Puleſton* v. *Warburton.*

After a whole term elapſed without doing any thing the plaintiff muſt give new notice. 1 Salk. 257. pl. 9. Trin. 10 W. 3. B. R.

Nobody can complain of an *irregularity* in an ejectment but the tenant in poſſeſſion or the landlord. 1 Salk. 256. pl. 7. Hil. 11 W. 3. C. B. Hollingworth v. Brewſter.

The court will not make a rule *for naming a good leſſor in ejectment,* unleſs there 12 Mod. 445. Hil. 12 W. 3.

were a nonſuit or verdict againſt plaintiff in a former trial.

CHAP. XXVI.

Motions on Statute 4th Geo. 2.

AN ejectment cannot be brought on the 4th of *Geo.* 2. without being ſpecially moved by council on an affidavit, that there was a year's rent in arrear, and no ſufficient diſtreſs on the premiſes.

K. B. Trinity 1770.

Mr. *Aſhhurſt* moved for judgment againſt caſual ejector: he ſaid that the ejectment was brought according to the 4th *Geo.* 2. which was of more benefit to his client than an ejectment in the common way; becauſe if the tenant did not file his bill in equity in ſix months, he was for ever precluded from claiming, whereas in the caſe of a common ejectment, after the landlord had got poſſeſſion, the tenant, by virtue of ſome leaſe or demiſe, might bring a freſh ejectment againſt the landlord.

CHAP. XXVII.

Motion to ſtay Proceedings in Ejectment, according to Stat. 4. Geo. 2.

SERJEANT *Burland* moved that proceedings in ejectment might be ſtayed, on tender of rent in arrear to the landlord.

The ſerjeant ſaid he moved it on the equity of the Statute of 4. *Geo.* 2. *c.* 28.

The ſtatute ſays, if the tenant do, or ſhall at any time before the trial, pay or tender to the landlord, or pay into court the rent in arrear, then proceedings ſhall be ſtayed.

That in the preſent caſe, the tender of the rent was made before the ejectment was brought, *viz.* on 7th *November*, and ejectment was not ſerved till 4th *December*.

Serjeant *Leigh contra* inſiſted that the tender muſt be made after the ejectment commenced, and not before.

Mr.

Mr. juſtice *Gould.* Where half a years rent is in arrear, the 4. *Geo.* 2. has given an equitable juriſdiction to the courts of law.

The niceties of demand and re-entry before the act, are taken away by this ſtatute.

A tender of the rent before ejectment brought, is within the meaning of the ſtatute, and as good as if it was made afterwards.

Mr. juſtice *Blackſtone.* This is an ejectment which leſſor had no right to bring, till the 4. *Geo.* 2. for till then he could not have brought it without an entry and demand, but this act allows the landlord to bring an ejectment, without any entry or demand. It could never be the meaning of the legiſlature, that the tender ſhould ſtay proceedings after the action commenced, and conſequently after coſts accrued, and that it ſhould not have the ſame effect when no action was commenced, and no coſts accrued, for this would be giving the landlord a power of oppreſſing his tenant.

Per

Per Cur. the tender was good.—Let proceedings be ſtayed. C. B. Trin. term, 1771.

An ejectment was brought for non-payment of rent; on motion, the court granted a rule to ſtay proceedings on payment of rent and coſts, and the court granted a new leaſe to be executed. 1 Lilly P. R. 379.

After judgment againſt the caſual ejector, and before any writ of poſſeſſion executed, the court made a rule to ſtay proceedings, on payment of rent and coſts, it not being pretended that the ejectment was brought on any other title than a reentry for non-payment of rent. Strange 90.

A tenant omitting to pay his rent at the day appointed in the leaſe, the landlord brought an ejectment to vacate the leaſe, on which the tenant made an affidavit, that the ejectment was brought for non-payment of rent, which the landlord had refuſed to accept after the time appointed for payment of it, and therefore moved that the proceedings might be ſtayed, on payment of the rent into court.

Plaintiff's agent ſaid he could not conſent, as the ejectment might be brought for ſome other breach of covenant beſides C. B. Hilary Term. 1774.

the

the non-payment of rent, and it being too late in the term to have an affidavit out of the country, the court could make no rule then, but declared the plaintiff would proceed at his peril, if it ſhould appear that the ejectment was brought for no other cauſe than the non-payment of rent.

Where it appears that no rent is in arrear, the court will grant a rule to ſhew cauſe why the poſſeſſion ſhould not be reſtored.

CHAP. XXVIII.

Motions to ſtay Proceedings on Mortgages by virtue of 7. Geo. 2.

WHEN an ejectment is brought by a mortgagee, the mortgagor by the 7. *Geo.* 2. c. 20. may move for a rule to ſhew cauſe, why it ſhould not be referred to the prothonotory in *C. B.* or to the marſhal in *K. B.* to compute what is due for principal, intereſt, and coſts on the mortgage; and that on payment thereof proceedings to be ſtayed, and the mortgage aſſigned to the mortgagor, or perſon entitled to the equity of redemption.

The

The affidavit on theſe motions ſets forth the title of the mortgagor, or perſon entitled to the equity of redemption, that the premiſes are in mortgage; that being ſerved with a declaration in ejectment, application was made to the mortgagee, to accept the mortgage money; that the party on whoſe behalf the motion is made is intitled to the equity of redemption, and that there is no ſuit depending in equity, reſpecting the premiſes.

Theſe motions are frequent in both courts. 1 Barnes 118.

The like motions are frequently made in actions brought on mortgage bonds, and bonds for ſecuring annuities.

A rule was made to ſtay proceedings in ejectment, on payment of principal, intereſt, and coſts into court; but as it appeared that the mortgagee had given notice to the mortgagor, that he inſiſted on payment of two bonds which were a lien on the eſtate; the caſe was held to be out of the act of parliament. Felton v. Aſh. 1 Barnes 121.

CHAP. XXIX.

Motion to ſet aſide Judgment in Ejectment.

ON a motion to ſet aſide judgment in ejectment by default, on a ſuggeſtion that the party who brought the ejectment had clearly no right to the premiſes.

De Grey Ch. Juſt. ſaid that the court could not ſet aſide a judgment, without ſome good grounds, that the party who applies to ſet aſide a judgment on record, ought to make a clear caſe.

C. B. Hil. 1775.

The preſent caſe not being ſo, the court ordered a new ejectment to be brought, and that the party who had got poſſeſſion ſhould accept a declaration as if delivered before the *Eſſoin* day of *Hilary* term, ſo as to try it at the next aſſizes, otherwiſe judgment to be ſet aſide.

In *Eaſter* term 1771, a motion was made to ſet aſide a judgment in ejectment, becauſe the agent forgot to put in an appearance according to inſtructions given him in *July*; the declaration was delivered in *July* with notice to appear in *Michael-*

mas

mas term, and judgment was ſigned in the month of *March*.

Curia. This being a country cauſe the defendant had till four days after the end of the next iſſuable term (*viz Hil.* term) to appear in, and the plaintiff would have been as forward if the declaration had not been delivered till the 19th of *January*, the day before the *Eſſoin* day of *Hilary* term, for the plaintiff could not have had a rule for judgment but in an iſſuable term.

Judgment was ordered to be ſet aſide on defendant's paying coſts, and agreeing to try the cauſe at the next aſſizes, and the poſſeſſion of the premiſes not to be interrupted till after the trial. C. B. Eaſter 1771.

Serjeant *Burland* ſhewed cauſe why judgment in ejectment, and the writ of poſſeſſion thereon, ſhould not be ſet aſide, becauſe the tenant applying to ſet aſide this judgment, had given inſtructions to his agent to enter an appearance, but the agent's death prevented it.

The ſerjeant ſaid the leſſor of the plaintiff was in poſſeſſion of all the premiſes under

under the writ of poſſeſſion, that there was but one declaration, and a copy of it delivered to two tenants, and there being judgment againſt the caſual ejector as to the premiſes in poſſeſſion of both the tenants; he agreed that the judgment might be ſet aſide againſt one, without being ſet aſide againſt the other.

Curia. If you bring ejectments againſt *twenty* perſons, and only one appears, you muſt have judgment againſt all the reſt; you recover againſt each what each had in his poſſeſſion; as the agent's death prevented an appearance being entred, this muſt be enquired into at the aſſizes.

Let the poſſeſſion be reſtored to the tenant applying to ſet his judgment aſide on his going to trial at the next aſſizes, the judgment muſt ſtand as to the other tenant. *C. B.*

A tenant attorned to Sir *William Dolſen* on the execution of the writ of poſſeſſion, then that tenant (who was defendant in ejectment) ſold his pretended right to *A. B.* who on a freſh ejectment being brought, obtained a rule to be made defendant, as landlord of the premiſes.

Mr.

Mr. *Dunning* moved to have that rule diſcharged, the party claiming under the tenant, whoſe title was tried by the former ejectment, and the court ordered it to be diſcharged accordingly. K. B. Hil. 1771.

On a motion to ſet aſide a judgment and writ of poſſeſſion, it was ſuggeſted that the perſon who ſerved the declaration in ejectment, told the tenant in poſſeſſion, that it was a mere matter of form, and ſignified nothing, whereby the tenant omitted to acquaint his landlord with it, in order to be made defendant. *The court* ſaid if the fact was ſo, the judgment muſt be ſet aſide; but it appeared afterwards that the tenant would not receive the declaration, and the perſon who ſerved it ſaid it does not ſignify whether you do or no, leaving it with you will be good ſervice. C. B MSS. Caſe.

The tenant in poſſeſſion muſt be duly ſerved, and if he is not, he has a right to ſet aſide the judgment. Aſlin & Parker. 2. Burr. 665.

CHAP. XXX.

Notes of Caſes in Ejectment.

K B. H. I. 1773.

MR. *Mansfield* moved, that fixing a declaration on the premiſes as in the caſe of a vacant poſſeſſion, might be deemed a good ſervice. The affidavit ſtated that Mrs. *Jones* was tenant of the houſe in queſtion, that ſhe had notice to quit at *Lady-day* laſt paſt, that not quitting purſuant to the notice, a copy of a declaration in ejectment was ſerved by the attorney's clerk, on Mrs. *Jones*'s niece; afterwards the attorney aſked the niece whether ſhe had given the declaration in ejectment to her aunt, the niece ſhuffled and ſaid yes and no, and that ſhe had given the declaration to her aunt's brother, who did buſineſs for her, that her aunt was at *Briſtol* or elſewhere; upon which a declaration in ejectment was ſerved on Mrs. *Jones*'s brother, and another was fixed on the door of the Houſe. Mr. *Mansfield* cited *Burr.* 1116 and 1180, in ſupport of his motion. The court ſaid they could not proceed as in the caſe of vacant poſſeſ-

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ſion, by allowing the ſticking the declaration on the door to be good ſervice, there being a niece in the houſe; and Mr. *Cowper* was ordered to look into the rules made in the caſes mentioned in *Burr. Rep.* and on reading them, the court granted a rule to ſhew cauſe why ſervice of the declaration on the niece and on Mr. *Jones* the tenant's brother, ſhould not be good ſervice, and ordered copies of the rule to be ſerved on Mr. *Jones* and the niece, and if there ſhould be nobody in the houſe, then the copy to be fixed on the door.

Mr. *Cowper* ſaid that the rules granted in the caſes in *Burr.* were made abſolute on affidavit of ſervice.

The practice is the ſame in the *C. P.* and in *Barnes's Notes* there are diverſe rules granted on the like occaſion, which are generally made abſolute on affidavit of ſervice.

In the caſe of *Savage v. Dent Michaelmas* term, 10 *Geo.* 2. the leſſee of a public-houſe took another public-houſe and removed his goods and family, but left beer in the cellar, and there being rent in ar-

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rear, the landlord ſealed a leaſe as in the caſe of a vacant poſſeſſion, delivered an ejectment and ſigned judgment, which was ſet aſide, the leſſee ſtill continuing in poſſeſſion; and a caſe was mentioned, where leaving hay in a barn was held to be keeping poſſeſſion. It further appeared that plaintiff's attorney knew where the leſſee removed to, and might have ſerved him perſonally, which is not neceſſary to be done on the premiſes.

Mich. 9 Geo. 2. Berrington ex dem. Dormer v. Parkhurſt & al. MSS.

Defendant in ejectment cannot be ſtruck out to make him a witneſs for defendant.

Motion *per* ſerjeant *Chapple* on behalf of defendants, to have one *R. Eggerſly* defendant in ejectment, ſtruck out of the declaration, alledging that he was a material witneſs in this cauſe for the other defendants, and as a reaſon that he was only a ſervant to one of the defendants and had none of the lands in his poſſeſſion. 1. *Syd.* 24. 441. was cited. Rule was granted to ſhew cauſe on the next day, and cauſe ſhewn accordingly, when an affidavit was produced that the ſaid *Eggerſly* was, at the time of ſerving the ejec-

ejectment, a tenant in poſſeſſion of a meſſuage, part of the premiſes in demand.

It was ſaid that this was a new rule, and of dangerous conſequence, and had beſides been denied; that defendant had pleaded, and his name was in all the jury proceſs, which could not therefore be changed; and beſides that he was liable to coſts if a verdict ſhould be againſt him by the ſtatute, and that this would be trying the merits of the cauſe by affidavit. *James* and *Kent* was cited, where on a motion that *Kent* the tenant in poſſeſſion might be ſtruck out, and the landlord added a defendant, and the court ſaid it could not be done, that is, that the defendant could not be ſtruck out, and motion was denied. That it appeared by defendant's affidavit, that defendant had been in poſſeſſion and always reputed tenant, and that he had admitted himſelf to be ſo, by his appearance and entring into the rule. It was anſwered, that it was every day's practice to change the bail, in order that the party might be a witneſs. And the caſe of 3. *Lev.* 347. was cited and relied upon for defendant.

Hil. 6. Geo. 2.

That the queſtion was whether the court could by law do this, and in the next place, whether it was reaſonable.

Paſch. 3 Car. 1. Mountague v. Sir G. Maxwell.

In the caſe of *Stephens* and *Gerrard*, 1 *Syd.* 315. defendant (a ſervant) was examined as a witneſs, though actually in poſſeſſion.

Lord *Hardwicke* was ſorry the motion came ſo late, and ſaid it deſerved more ſerious conſideration. The queſtion, he ſaid, was, whether the court *could* do this; that it depended upon the caſes cited, and the reaſon of the thing. That the caſes cited by defendant did not come up to the preſent queſtion. That the caſe in *Levinz* was a caſe of amendment and of neceſſity, which was always diſcretionary in the court. That the caſe in *Syd.* 24. was different; that the plaintiff in ejectment was always a feigned and nominal perſon, and alterable according to things and circumſtances, which was apparent in the caſe of an infant leſſor, and that the meaning of the caſe ſeemed to be, that it was full as reaſonable to change a feigned defendant as a feign-

a feigned plaintiff, but that did not come up to the preſent caſe.

Nor, he ſaid, did the caſe in 1 *Syd.* 441. In that caſe plaintiff might have entred a *nol. proſ.* as it was once done in a caſe of the crown by the attorney-general, in a cauſe in this court, before *Holt*, Ch. Juſt. *ex relatione.* Sir *Robert Raymond.*

And no caſe being cited in point, his Lordſhip ſaid, he ſaw no particular reaſon for complying with this motion.

A tenant at will, or any other having but an uncertain intereſt, if made a defendant in ejectment, can't be examined as a witneſs.

Service of a declaration upon a ſervant in the houſe, no otherwiſe good ſervice than on an affidavit that the tenant kept out of the way to avoid ſervice. Mich. 10 G.

Here the plaintiff muſt ſwear, in his affidavit for judgment againſt the caſual ejector, that he was tenant in poſſeſſion; ſo there would be affidavit againſt affidavit,

and conſequently truth would be ſuſpended.

Mr. J. *Page* ſaid he knew no inſtance when defendant, at his own motion, could abridge the plaintiff's action.

Mr. J. *Probyn* obſerved, that the affidavit ſhould ſwear that defendant was in poſſeſſion.

Lee, J. The caſes cited ſhew that defendants have been under the like circumſtances as the preſent, and yet they did not attempt to apply in this manner for relief. That the court had not an authority to do what was prayed of them to do.

That the caſe muſt be put on this footing, that here was an irregular ſervice of the defendant in ejectment, and that the practice in ſuch caſe was, for the court to grant a rule againſt the caſual ejector, but that the party had admitted himſelf tenant, and confeſſed himſelf to have been guilty of the ouſter.

Rule diſcharged *per tot. cur.*

Wor-

Worley moved that the verdict might be ſet aſide for a miſ-trial, for that there was no knight upon the panel. A challenge to the action for this reaſon, a counter-plea no knight inhabiting in the county, demurrer and joinder. And *Page*, judge of aſſize, over-ruled the challenge, on the authority of Lord *Kingſton*'s caſe. Grimſton, ex dem. Ld. Gower, v. Gurner & al'.

Caſe in the Houſe of Lords, where it was held, that as ſhe was neither plaintiff nor defendant, a challenge did not lie for the motion. Caſes in margin cited. Moor 894. Skin. 229.

And the rule was diſcharged on the authority of that caſe. Lord *Hardwicke* ſaid he was of council in that caſe; it was when Lord *Cowper* was chancellor.

In ejectment, notice of trial given to the defendant's wife, affidavit that he did not know defendant's attorney, was held good notice. Goodright v. King.

CHAP. XXXI.

Of Evidence in Ejectment.

THE plaintiff counts of a joint leaſe, made by *A.* and *B.* In evidence it appeared, that *A. B.* and *C.* were jointe- Jurdaine v. Steene. 2 Cro. 83.

nants,

nants, that *C.* leaſed to *B.* and that *A.* and *B.* leaſed to the plaintiff. By three juſtices againſt two it is good.

Elegit. When he that ſued an elegit brings an ejectment to try the title, he muſt in evidence ſhew the elegit filed.

Mantle v. Woollington. 2 Cro. 166. Count of a joint leaſe made by two. In evidence, it appears they were tenants in common. By three juſtices againſt one it is good.

2 Cro. 618. Count of a leaſe by huſband, evidence was, a leaſe by huſband and wife, with letter of attorney to make livery, and it is made in name of both. By three juſtices againſt one it is good; for livery, as to the feme, was void.

Moore v. Muſgrave. Hobart 19. Of a leaſe made 5 *Maii*, 10 *Regis*, *habendum* from *Lady-day* laſt paſt, for twenty-one years, *extunc prox' ſequent.* In evidence a leaſe of 5 *Maii*, 10 *Regis*, *habendum* from *Lady-day* laſt paſt for twenty-one years next following the date of the ſaid indenture adjudged good, and affirmed in error.

Ejectment of a rectory, evidence of the taking of tithes only, and not entring into the glebe, the plaintiff was nonſuit. Latch. 62. 2 Sid. 91.

The rule to confeſs leaſe, entry, and ouſter, doth not extend to confeſs an actual entry upon a leaſe, that is the title, but the court ſaid an entry ſhall be intended, until the contrary be proved on the other ſide. But he that makes a leaſe, or an aſſignment of the leaſe, after the commencement, muſt be in poſſeſſion, *&c.* Sid. 223.

If a truſtee of a leaſe be leſſor in ejectment, his diſclaimer *in pais* will avoid the plaintiff's title. 2 Keb. 794.

In ejectment, the leaſe of a guardian or copyholder will maintain a declaration, though void againſt the lord and infant, but a leaſe *de herbage* will not of meadow. Wheeler v. Toulſon. Hardr. Rep. 330.

In ejectment, a leaſe to *A.* of lands, in the poſſeſſion of three tenants for years, was delivered to *J. S.* as an eſcrow, with letter of attorney to enter into all, and then to deliver the deed, *&c.* Evidence that the attorney entred upon one leſſee in Latch. 71. Dame Argol's caſe.

in the name of all, and delivered the deed, &c. *Per Jones*, juſtice, it is good enough; for where the freehold is in one, his entry into one leſſee for years, in name of all the reſt, is good.

See Trials per pais 424.

Where one declares on a fictitious leaſe to *A.* for three years, and within the ſame time declares of another fictitious leaſe to *B.* of the ſame lands, the laſt is not good; for treſpaſs for the meſne profits muſt be brought in the firſt leſſee's name, *ut dicitur.*

Trial per pais 424.

In ejectment, the defendant ſhall not give in evidence a former mortgage or conveyance made by himſelf, and therefore, in ſuch caſes, it is left for him that has the former mortgage to get himſelf made defendant before the cauſe comes to trial.

Jones Rep. 321, 322.

Ejectment of tithes, a leaſe for life of tithes is good, if there be church or church-yard to make livery in; reſolved on trial at bar. *Wheeler* v. *Hancher*. *Hil.* 14 & 15 *Car.* 2. *B. R.*

1 Keb. 620.

Entry and claim made upon the land within five years after the death of the Ba-

Baron of the Counteſs of *Peterborough*, to avoid a fine, ſhe being iſſue in tail, proved by one witneſs, and allowed at the trial at bar. *B. R. Mich.* 15 *Car.* 2. *Floyd* v. *Pollard.*

After default (in ejectment) the defendant may confeſs leaſe, entry, and ouſter, and may give evidence, and have all advantages, (except challenges) and if the plaintiff becomes nonſuit, any one for the defendants may pray it to be recorded. Trials per pais 426.

Per H. Wyndham, juſtice, *Bucks*, *Lent* 68. Dr. *Crawley*'s caſe. Deprivation in ſpiritual court for ſimony diſables from bringing ejectment, becauſe he can make no leaſe; yet *quære.*

If the declaration in ejectment be of *Michaelmas* term, which relates to the firſt day of the term, yet it is matter of evidence, and examinable what day the bill was filed, and if it was after the day of the leaſe all is well. Sid. 432.

Ejectione firmæ, declaration of a leaſe by indenture bearing date 6 *December*, 19 *Jac. habendum a die datus indenturæ præd.* on Not guilty, the leaſe produced was dated 6 *December*, 19 *Jac. habendum a tempore* Cro. Jac. 647.

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confectionis indenturæ, and the plaintiff was nonſuited, the leaſe proved being different from that he declared on.

What poſſeſſion or entry will prevent the ſtatute of limitations.

In ejectment, on a trial at bar, the ſtatute of limitations was inſiſted on, and theſe points were ruled *per cur.* 1. That the poſſeſſion of one jointenant is the poſſeſſion of the other, ſo far as to prevent the ſtatute of limitations. 2. That a claim or entry to prevent the ſtatute of limitations muſt be upon the land, unleſs there be ſome ſpecial reaſons to the contrary. 3. If one makes an anſwer in Chancery which is prejudicial to his eſtate, it may be given in evidence againſt him, but not againſt his alienee. 4. That a recital of a leaſe in a deed of releaſe is good evidence of ſuch leaſe againſt the releaſor, and thoſe that claim under him, but againſt others it is not, without proving there was ſuch a deed, and that it was loſt and deſtroyed. 5. If one joint-tenant levies a fine, it ſevers the jointure, but does not amount to an ouſter of his companion.

Recital of leaſe in a releaſe is good evidence. Ford v. Gray. Salk. 285.

Anſwer of a guardian of an infant ſhall not be read againſt the infant.

In an ejectment at trial at bar, it was held, that the anſwer of a guardian of an infant in Chancery ſhall not be read againſt the

the infant; for it is only to bring the infant into court, and make him a party. 3 Mod. 258. Eggleſtone & al. v. Speke.

In ejectment, the defendant claimed as a purchaſor under a deviſee of a will, and to prove ſuch will produced a bill in Chancery, brought by the heir at law, (under whom the leſſor of the plaintiff claimed) in which the will was ſet out, and that was confeſſed by the anſwer; but held no evidence, though it was proved the deviſee had enjoyed the lands accordingly. 2 Keeble 35.

CHAP XXXII.

Of divers Matters relating to Ejectments.

THE court will take notice, that an ejectment is only a fictitious proceeding for recovering the poſſeſſion; which cannot be well obtained otherwiſe; and the entry laid in the declaration, or confeſſed by the defendant, is not an entry that is real, for it ſhall neither avoid a fine, nor be ſufficient evidence to ſupport treſpaſs for the meſne profits. 1 Salk 246. Paſch. 6 W. & M. B. R. Smart v. Williams.

Ejectment for two meſſuages, two gardens, ſeventy acres of land, fifteen acres of

8 Mod. 214. Paſch. 5 W. & M. B. R. Gwynn v. Pye.

of meadow, and thirty acres of paſture, in *D.* Plaintiff delivered declarations to two tenants only, and, as to the lands in their poſſeſſion, the defendant entered into the common rule; but, becauſe he had made ſeveral ſmall purchaſes in that pariſh, and the plaintiff claimed only twenty acres, lately granted to him by leaſe from the biſhop of *Glouceſter*; therefore he moved, that *the plaintiff might give a note in writing* before the firſt day of the next term, *what lands in particular* he claimed, and where ſuch lay, and in whoſe poſſeſſion, *&c.* or otherwiſe, that he might not proceed to trial at next aſſizes; for defendant, not knowing what lands plaintiff would claim, could not tell what purchaſe-deeds to produce at the trial—*ſed non allocatur.*

Ld. Raym. Rep. 728, 729. Anon. cites Mich. 8 W. B. R.

In *ejectment*, the *demiſe* by the leſſor to the plaintiff was laid to be the twenty-ſeventh of *April*, 1697, which was not come at the time of the trial; but the tenant had entred into the common rule to confeſs leaſe, entry, and ouſter; and the court compelled the defendant to confeſs leaſe, entry, and ouſter, otherwiſe the plaintiff would have been nonſuit, and then he would have had the judgment againſt the caſual ejector, although it was objected, that

that the plaintiff could not have judgment, though the verdict were found for him. Ruled by the court of *B. R.* on a trial at bar. *

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*Since the introduction of fictitious ouſters, whereby the title may be tried againſt any tenant in poſſeſſion, the writ of *Quare ejecit intra terminum* is fallen into diſuſe—but it lies by the ancient law, where the wrong-doer or ejector is not himſelf in poſſeſſion of the land, but another who claims under him; as where a man leaſeth to another for years, and after the leſſor or reverſioner enters, and makes a feoffment in fee or for life of the ſame lands to a ſtranger. Now the leſſee cannot bring a writ of *ejectione firmæ* or ejectment againſt the feoffee, becauſe he did not eject him, but the reverſioner, neither can he have any ſuch action to recover his term againſt the reverſioner, who did ouſt him, becauſe he is not now in poſſeſſion, and upon that account this writ was deviſed on the equity of the ſtatute of *Weſtminſter*, (2 *Car.* 24) as a caſe where no adequate remedy was already provided, and the action is brought againſt the feoffee, for deforcing or keeping out the original leſſee during the continuance of his term, and herein, as in the ejectment, plaintiff ſhall recover ſo much of his term as remains, and damages, for that portion of it whereof he has been unjuſtly deprived. Bl. 8vo. 3 vol. 206.

Statutes relating to Ejectments.

THE act of parliament which has in ſeveral inſtances altered the common law is that which was paſſed by the 4th of *Geo.* 2. by which it is enacted, that in caſe any tenant for life, or any term of years, or other perſon coming into the poſſeſſion of lands or tenements by colluſion with ſuch tenant, ſhall wilfully hold over any lands or tenements after the determination of ſuch term or terms, and after demand made or notice in writing given for delivering the poſſeſſion thereof, by the landlord or leſſor, the perſon ſo holding over ſhall pay double the yearly value, and the defendant in ſuch action ſhall give ſpecial bail, and have no relief in equity.

Penalty on tenants concealing ejectments from their landlords, ſee 11 Geo. 2. c. 19. ſ. 12. Landlords may be made defendants with or without their tenants ſee the ſame ſtatute.

In all caſes between landlord and tenant after the twenty-fourth of *June*, 1731, when half a year's rent ſhall be in arrear, the landlord having a lawful right to re-enter for non-payment, may ſerve a de-

claration in ejectment without a formal demand or re-entry, or affix such declaration on the door of any demised messuage, or notorious place of the lands, which shall be deemed a legal service, and on proof that half a year's rent was due before the said declaration was served, and no sufficient distress on the premises, the lessor shall recover judgment and execution as fully as in case a formal re-entry had been made, and if the lessee shall suffer judgment to be recovered on such ejectment and execution, without paying the arrears and costs, and without filing a bill within six months after execution, he shall be barred from all relief in law or equity other than by writ of error, and the lessor shall hold the demised premises as discharged from such lease; but not to bar the right of any mortgagee, provided he pay all rent in arrear, and costs, within six months after judgment obtained, and performed all the covenants of the lessee.

If a lessor shall, within the time aforesaid, file a bill for relief in equity, no injunction is to be granted, unless he, within forty days after an answer filed by the lessor, shall deposit in court the whole rent

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in arrear, beſides coſts, ſubject to the decree of the court, and if the leſſor ſhall actually enter into the poſſeſſion of the demiſed premiſes, and the leſſee, on filing a bill within the time limited, obtain a decree in his favour, the leſſor is to be accountable only for the profits really made of the premiſes during his poſſeſſion thereof, and the leſſee is to pay to the leſſor ſo much money as that fell ſhort of the whole rent in arrear before he be reſtored to his former poſſeſſion.

But if the tenant, before the trial, will either tender to the leſſor, or bring into court, the rent in arrear, together with coſts, all further proceedings ſhall ceaſe; and if the leſſee be relieved in equity, he ſhall enjoy the demiſed premiſes according to the leaſe thereof, without obtaining a new one.

All perſons, bodies politic and corporate, may have the like remedy by diſtreſs and ſale in caſes of rent-ſeck, rents of aſſize, and chief rents, which have been duly paid for three years within twenty years before the firſt day of the parliament, or ſhall be hereafter created, as in caſe of rent reſerved upon leaſe.

If any leaſe ſhall be duly ſurrendered, in order to be renewed, and a new leaſe granted by the chief landlord, it ſhall be as good and valid as if all the under-leaſes had been likewiſe ſurrendered before the taking ſuch new leaſe; and all perſons veſted therewith ſhall be intitled to the rents, and have the like remedy for the recovery thereof, and the under-leſſees are to enjoy the demiſed premiſes as fully as if the original leaſes had been ſtill continued; and the chief landlord ſhall have the ſame remedy for recovering his rent as he would have had in caſe the reſpective under-leaſes had been renewed under ſuch new principal leaſe. This act not to extend to *Scotland*.

Rules and Orders &c. in Ejectment.

Trinity, 15. *Car.* 2. *R.* 1.

IT is ordered by the court, that in every action of treſpaſs and ejectment where the defendant, by the rule of court, ſhall confeſs leaſe, entry, and ouſter, for ſo much of the premiſes in the declaration mentioned, as are in the poſſeſſion of the ſaid defendant, or his under-tenants, the attorney of ſuch defendant ſhall immediately deliver to the plaintiff's attorney, a certain note in writing, of the tenements ſo being in the poſſeſſion of the ſaid defendant or his under-tenants.

The defendant, where he doth not defend the whole to give a note of the premiſes in his poſſeſſion, to the plaintiff.

Michaelmas, 33. *Car.* 2.

It is ordered by the court, that the rule of this court formerly made for filing bail, be obſerved upon the penalty of the forfeitures in the ſaid rule mentioned.

A latitat to be ſued out and bail filed before judgment againſt caſual ejector.

And it is further ordered, that all attorneys of this court who ſhall deliver or cauſe to be delivered any declaration in a a plea of treſpaſs and ejectment, to any tenant in poſſeſſion of any lands or tenements, ſhall ſue out a writ of *latitat* againſt the caſual ejector, and file common bail for him, before they ſhall ſign judgment againſt the caſual ejector in any ſuch action. *

Hilary 1649.

See ſtat. of 4. & 5. Ann, a latitat and a rule to plead entred before motion for judgment.

It is ordered that after the ordinary rule of this court hereafter given to the defendant, to plead in any action of treſpaſs and ejectment, and the defendant doth not plead to the declaration, judgment may be given and entred for the plaintiff againſt the defendant for want of a plea as in other actions, without ſpecial motion in court by counſel, provided that in this preſent term of St. *Hilary* the plaintiff

* It has been lately held that there is no neceſſity for a bill of *Middleſex* or a *latitat*, where the caſual ejector files common bail for his being admitted out to bail, implies he was once a priſoner, and whether he came into court regularly by *latitat* or not, yet the judgment is *coram non judice*.

ſhall

ſhall give the defendant ſpecial notice to this general rule.

Trinity, 18. *Car.* 2. 1666.

That a rule to plead in Ejectment be entred before any motion be made for judgment againſt the caſual ejector.

Whereas by the ancient courſe of this court, rules to plead ought to be given and entred with the clerk of the rules of this court, in all actions in this court brought and depending, which courſe hath lately been neglected in actions of treſpaſs and ejectment, for prevention whereof for the time to come, *It is ordered* that every attorney of this court ſhall enter with the clerk of the rules, a general rule to plead in every action of treſpaſs and ejectment, before any motion ſhall be made in court for judgment againſt the caſual ejector.

Hil. 1649. Motion muſt be made in that term wherein the tenant had notice to appear. Salk. 257.

Michaelmas, 6. *Geo.* 2.

Rule by conſent in ejectment, A. B. v. C. D. for ——— in the county of ——— on the demiſe of E. F.

It is ordered on the aſſent of the attornies of both parties, that *G. H.* be made defendant in the place of the now defendant *C. D.* and that he ſhall appear immediately at the ſuit of the plaintiff, and put in common bail, and ſhall receive a declaration in a plea of treſpaſs and ejectment of farm for the tenements in queſtion, and ſhall immedi-

immediately plead not guilty thereto; and upon trial of the iſſue, ſhall confeſs leaſe, entry, and actual ejectment, and inſiſt upon the title only, otherwiſe judgment ſhall be entred for the plaintiff againſt the now defendant *C. D.* by default, and if, upon the trial of the ſaid iſſue, the ſaid *G. H.* ſhall not confeſs leaſe, entry, and actual ejectment, by which the ſaid plaintiff ſhall not be able further to proſecute his bill againſt the ſaid *G. H.* then no coſts or charges ſhall be adjudged upon ſuch non proſs; but the ſaid *G. H.* ſhall pay to the plaintiff his coſts and charges thereon to be taxed; and it is further ordered, that if, upon trial of the ſaid iſſue, a verdict ſhall be given for the ſaid *G. H.* or if it ſhall happen that the ſaid plaintiff ſhall not further proſecute his ſaid bill, for any other cauſe than for not confeſſing leaſe, entry, and actual ejectment aforeſaid, that then the leſſor of the plaintiff ſhall pay the ſaid *G. H.* his coſts and charges in that behalf to be adjudged, and ſo forth.

Affidavit

Affidavit of Service of Declaration in Ejectment.

In the Kings Bench, *between* A. B. *Plaintiff and* C. D. *Defendant.*

A. B. maketh oath that he this deponent did on the day of laſt, deliver a true copy of the declaration hereto annexed, unto *G. H.* tenant in poſſeſſion of the premiſes in the ſaid declaration mentioned, on which copy was written a notice to the ſaid *G. H.* purporting that unleſs he did appear by ſome attorney of the *Kings Bench* this preſent *Hilary* term, judgment would be ſigned againſt the caſual ejector, by default, and he would be turned out of poſſeſſion, and at the ſame time this deponent acquainted the ſaid *G. H.* of the intent and meaning of the ſaid declaration and notice.

A. B.

Sworn *&c.*

Affidavit

Affidavit of the Tenant's refuſing to defend an Ejectment, in order to have the Landlord admitted Defendant.

A. B. *Leſſee of* C. D. *againſt* E. F.

T. *W.* of maketh oath that he this deponent did this day of by the direction of *G. H.* landlord of the premiſes in queſtion in this cauſe, apply to *J. K.* tenant in poſſeſſion of the ſaid premiſes, to know whether he the ſaid *J. K.* would appear and become defendant in this cauſe or would permit the ſaid *G. H.* to defend his title to the ſaid *J. K.* and this deponent at the ſame time ſhewed and offered to deliver unto the ſaid *J. K.* a note ſigned by the ſaid *G. H.* whereby the ſaid *G. H.* promiſed to defend and keep the ſaid *J. K.* harmleſs, of, from, and againſt all coſts and charges in this cauſe, and the ſaid *J. K.* told this deponent, that he would not appear and become defendant in this cauſe, or any ways concern himſelf therein.

A Col-

A Collection of Select Precedents in Ejectment.

Leaſe in Ejectment where the premiſes are not inhabited in order to recover the Poſſeſſion. Andrew and Lilly.

THIS indenture made the 23d day of *May*, in the 24th year of the reign of our ſovereign Lord *Charles* the ſecond, by the grace of God of *England*, *Scotland*, *France*, and *Ireland*, King, defender of the faith, in the year of our Lord 1680, between *John Andrews* of the *Strand*, victualler, of the one part, and *John Lilly* gentleman, of the other; witneſſeth that he the ſaid *John Andrews* for divers good cauſes and conſiderations him thereunto moving hath demiſed, granted, and to farm letten, and doth by theſe preſents demiſe, grant, and to farm let unto the ſaid *John Lilly*, all that his meſſuage commonly called and known by the name of the *Tallow Chandler's Head*, ſituate, lying, and being in *Bloomſbury Market-place*, in the pariſh of *St. Giles in the Fields*, in the county of *Middleſex*, and late in poſſeſſion of one *Henry Dunſcomb*, to have and to hold the premiſes aforeſaid with the appurtenances, from the date of theſe preſents, for and during

Pract. Reg. 469.

during and unto the full end and term of two years from thence next enſuing, and fully to be compleat and ended; provided always, and upon condition that if the ſaid *John Andrews*, his executors or adminiſtrators, ſhall at any time after the 30th of this preſent *May*, tender to the ſaid *John Lilly*, his executors or adminiſtrators, one ſhilling, then this preſent indenture and every thing herein contained ſhall be void and of none effect (any thing herein contained to the contrary in any wiſe notwithſtanding) in witneſs whereof the parties aboveſaid have hereto interchangeably ſet their hands, *&c.*

Declaration in Ejectment by Bill.

Middleſex, } *A. B.* complains of *C.*
to wit, } *D.* being in the cuſtody of the marſhal of the *Marſhalſea*, of our ſovereign lord the King before the King himſelf, for that whereas *E. F.* gentleman on the tenth day of *May*, in the fifth year of the reign of our Sovereign Lord *George* the ſecond, by the grace of God, of *Great-Britain* and ſo forth, at *Weſtminſter*, in the county of *Middleſex*, had demiſed, granted, and to farm let to the ſaid *A. B.* five meſſuages (reciting the reſt of the parcels) with the appurtenan-

ces, ſituate, lying, and being in the pariſh of *St. Martin in the Fields*, in the ſaid county of *Middleſex*; to have and to hold the ſaid tenements with the appurtenances, to the ſaid *A. B.* and his aſſigns, from the 25th day of *March* then laſt paſt, to the full end and term of five years from thence next enſuing, and fully to be compleat and ended, by virtue of which ſaid demiſe, he the ſaid *A.* entered into the ſaid tenements with the appurtenances, and was thereof poſſeſſed, until the ſaid *C.* afterwards (that is to ſay) on the ſame 10th day of *May*, in the ſixth year aforeſaid, with force and arms entered into the ſaid tenements with the appurtenances in and upon the poſſeſſion of the ſaid *A.* and ejected, drove out, and removed the ſaid *A.* from his ſaid farm, during his ſaid term, not yet expired (and the ſaid *A.* being ſo ejected, drove out, and removed) the ſaid *C.* hitherto hath withheld from him, and ſtill doth withhold the poſſeſſion thereof, and then and there brought other injuries upon him, againſt the peace of our ſaid Sovereign Lord the King, and to the damage of the ſaid *A.* twenty pounds and thereupon he brings his ſuit, *&c*

A Niſi

A Niſi Prius *Record in Ejectment.*

Pleas before our Lord the King at Weſtminſter, *of the Term of* ———, *in the* ——— *Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *and ſo forth.*

Middleſex, } BE it remembred, that on
to wit, } ——— next after, &c.
(the firſt day of the term) in this ſame term, before our Lord the King at *Weſtminſter,* came *A. B.* by *R. S.* his attorney, and brought here into the court of our Lord the King there his certain bill againſt *C. D.* being in the cuſtody of the marſhal, and ſo forth, of a plea of treſpaſs and ejectment of farm, and there are pledges of proſecuting (to wit) *John Doe* and *Richard Roe,* which ſaid bill follows in theſe words, *Middleſex,* to wit, *A. B.* complains of *C. D.* being in the cuſtody of the marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that, to wit, that whereas *E. F.* gentleman, on the ——— day of ——— in the —— year of the reign of our Sovereign Lord *George* the Second, now King of *Great Britain,* and ſo forth, at the pariſh

riſh of St. *George the Martyr*, in the county of *Middleſex*, had demiſed, granted, and to farm let to the ſaid *A. B.* twenty meſſuages, with the appurtenances, ſituate, lying and being in the ſaid pariſh of St. *George the Martyr*, in the ſaid county of *Middleſex*, to have and to hold the ſaid meſſuages, with the appurtenances, to the ſaid *A.* and his aſſigns, from the —— day of *December* then laſt paſt unto the full end and term of five years from thence next enſuing, and fully to be complete and ended, by virtue of which demiſe the ſaid *A.* entered into the ſaid meſſuages, with the appurtenances, and was poſſeſſed thereof, until the ſaid *C.* afterwards, to wit, on the ſaid —— of *January*, in the year aforeſaid, with force and arms, and ſo forth, entered on the meſſuages aforeſaid, with the appurtenances, in and upon the poſſeſſion of the ſaid *A.* and ejected, drove out, and amoved the ſaid *A.* from his ſaid farm, his ſaid term not being yet expired, and thereupon kept out and ſtill keeps out from his ſaid poſſeſſion the ſaid *A.* ſo ejected, drove out, and amoved, and then and there did other injuries to the ſaid *A.* againſt the peace of the preſent King, and to the damage of

the ſaid *A.* of ten pounds; and therefore he brings ſuit, *&c.*

And the ſaid *C.* by *J. P.* his attorney, comes and defends the force, injury, and damages, and whatever elſe he ought to defend, when and where the court will take the ſame into conſideration, and ſaith, that he is in nothing guilty of the treſpaſs and ejectment aforeſaid, as the ſaid *A.* above complains againſt him; and of this he puts himſelf upon the country, and the ſaid *A.* likewiſe; therefore let a jury thereupon come before our Lord the King at *Weſtminſter*, on ——— next, &c. and who are in no wiſe a-kin either to the ſaid *A.* or to the ſaid *C.* to take cognizance upon their oaths of the whole truth of the premiſes, becauſe as well the ſaid *C.* as the ſaid *A.* have put themſelves upon that jury. The ſame day is given to the parties aforeſaid at the ſame place.

Juratis

Jurata.

Pleas before our Lord the King at Weſtminſter, *of the term of* —— *in the* —— *year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *and ſo forth.*

Middleſex, to wit, } THE jury between *A. B.* plaintiff, by his attorney, and *C. D.* defendant, of a plea of treſpaſs and ejectment of farm, is reſpited before our Lord the King, at *Weſtminſter*, until —— next after, *&c.* unleſs the King's right truſty and well beloved *William*, Lord *Mansfield*, his Chief Juſtice, aſſigned to hold pleas before the King himſelf, ſhall firſt come on *Friday*, the —— day of —— at *Weſtminſter-hall*, in the county of *Middleſex* aforeſaid, according to the form of the ſtatute in ſuch caſe made and provided, for default of the jurors, becauſe none of them did appear, therefore let the ſheriff have the bodies of the ſaid jurors, to make the ſaid jury between the parties aforeſaid of the plea aforeſaid; accordingly the ſame day is given to the parties aforeſaid, at the ſame place.

Iſſue on Declaration by Original upon two ſeveral Demiſes.

Eaſter *Term, in the* —— *Year of King* George *the Second.*

Middleſex, to wit. } *A. B.* late of *B.* in the county aforeſaid, gentleman, was attached to anſwer *C. D.* Eſq; of a plea, wherefore with force and arms into ſix meſſuages, ſix cottages, ſixty acres of land, ſixty acres of meadow, three hundred acres of paſture, and forty acres of woodland, with the appurtenances, in the pariſh of *B.* in the ſaid county of *Middleſex*, which *E. F.* and *G.* his wife, had demiſed to the ſaid *C.* for a term which is not yet expired, and into ſix other meſſuages, ſix other cottages, ſixty other acres of land, ſixty other acres of meadow, and three hundred other acres of paſture, and forty other acres of woodland, with the appurtenances, in the ſaid pariſh of *B.* which *J. L.* the younger, had demiſed to the ſaid *C.* for a term which is not yet expired, he entered and ejected him the ſaid *C.* from his ſaid farms, and did other injuries to him, to the great damage of the ſaid *C.* and againſt the peace of the preſent

ſent King, and ſo forth, and from whence the ſaid *C.* by *C. S.* his attorney, complains, that whereas the ſaid *E. F.* and *G.* his wife, on the firſt day of *April*, in the —— year of the reign of our Sovereign Lord the preſent King of *Great Britain*, and ſo forth, at the ſaid pariſh of *B.* had granted to the ſaid *C.* the ſaid ſix meſſuages, ſix cottages, ſixty acres of land, ſixty acres of meadow, three hundred acres of paſture, and forty acres of woodland, with the appurtenances, to have and enjoy the ſaid tenements, with the appurtenances, to the ſaid *C.* and his aſſigns, from the twenty-fifth day of *March* then laſt paſt unto the full end and term of five years thence next enſuing, and fully to be completed and ended, by virtue of which ſaid demiſe the ſaid *C.* entred into the ſaid laſt mentioned tenements, with the appurtenances, and was thereof poſſeſſed; and alſo that whereas the ſaid *F. L.* on the ſaid firſt day of *April*, in the —— year aforeſaid, at the ſaid pariſh of *B.* had demiſed to the ſaid *C.* the ſaid ſix other meſſuages, ſix other cottages, ſixty other acres of land, ſixty other acres of meadow, three hundred other acres of paſture, and forty other acres of wood-

First demiſe.

land, with the appurtenances, to have and enjoy thoſe tenements, with the appurtenances, to the ſaid *C.* and his aſſigns, from the ſaid twenty-fifth day of *March* then laſt paſt unto the full end and term of five years from thence next enſuing, and fully to be complete and ended, by virtue of which demiſe the ſaid *C.* entred into the ſaid laſt mentioned tenements, with the appurtenances, and was thereof poſſeſſed, and being ſo thereof poſſeſſed, and alſo being poſſeſſed of the ſeveral tenements aforeſaid, with the appurtenances, as aforeſaid, the ſaid *A.* afterwards, to wit, on the ſaid firſt day of *April*, in the ——————— year aforeſaid, with force and arms, *&c.* entred into the ſaid tenements, with the appurtenances, which the ſaid *E.* and *G.* his wife had, in form aforeſaid, demiſed to the ſaid *C. D.* for the ſaid term firſt above-mentioned, which is not yet expired, and into the ſaid tenements, with the appurtenances, which the ſaid *J. L.* had, in form aforeſaid, demiſed to the ſaid *C. D.* for the ſaid term laſt above mentioned, which is not yet expired, and ejected him the ſaid *C. D.* in form aforeſaid, and other injuries, and ſo forth, to the great damage

&c.

&c. and againſt the peace, &c. from whence he ſays that he is injured, and has damage, to the value of one hundred pounds, and therefore he brings his ſuit, &c.

And the ſaid *A. B.* by *J. P.* his attorney, comes and defends the force and injury, when, and ſo forth, and ſays that he is in nothing guilty of the treſpaſs and ejectment aforeſaid, as the ſaid *C.* above complains againſt him, and of this he puts himſelf upon the country, and the ſaid *A.* likewiſe, and ſo forth; it is therefore commanded to the ſheriff, that he cauſe to come before our Lord the King, on, &c. whereſoever, &c. twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. The ſame day is given to the parties aforeſaid, &c.

General iſſue.

Venire awarded.

Underhill *againſt* Durham.

Worceſter, to wit, } JOHN *Durham* late of *Willerſey*, in the county of *Glouceſter*, yeoman, was attached to anſwer *John Underhill* in a plea, why with force and arms three meſſuages, five hundred

Declaration for the meſne profits in an ejectment tried at bar. M. 11 W. 3. Pract. Reg. 499.

dred acres of land, two hundred acres of meadow and two hundred acres of paſture with the appurtenances, in *Treddington* in the county of *Worceſter* aforeſaid, he broke and entered, and him the ſaid *John Underhill* from the poſſeſſion and occupation of the ſame tenements ſo expelled and amoved, for a long time kept out, and alſo all the iſſues and profits of the ſame tenements, of the yearly value of two hundred pounds, for all the time aforeſaid, to the proper uſe of him the ſaid *John Durham*, received and had, and committed other outrages upon him, to the great damage of the ſaid *John Underhill*, and againſt the peace of the now Lord the King *&c.* and whereas the ſame *John Underhill* by *J. S.* his attorney, complains that the ſaid *John Durham*, on the 1ſt day of *June*, in the 10th year of the reign of the now Lord the King, with force and arms, three meſſuages, five hundred acres of land, two hundred acres of meadow and two hundred acres of paſture, with the appurtenances, in *Treddington* in the county of *Worceſter*, broke and entered, and him the ſaid *John Underhill* from the poſſeſſion and occupation of the ſame tenements expelled and amoved, and the ſame *John Underhill* from the poſſeſſion and occupation

cupation of the ſaid tenements ſo expelled and amoved for a long time (to wit) from the ſaid 1ſt day of *June* in the tenth year aboveſaid, until the day of the iſſuing of the original writ, of him the ſaid *John Underhill*, kept out, and alſo all the iſſues and profits of the ſame tenements of the yearly value, *&c.* for all the time aforeſaid, to the proper uſe of him the ſaid *John Durham*, received and had and other outrages, *&c.* to the great damage *&c.* and againſt the peace, *&c.* whereby he ſays that he is prejudiced and hath damage to the value of forty pounds, and therefore he produces the ſuit, *&c.*

And the ſaid *John Durham*, by *J. Lilly* his attorney, comes and defends the force and injury when, *&c.* prays *oyer* of the writ aforeſaid; and it is read to him in theſe words, to wit, *William*, *&c.* to the ſheriff of *Worceſter* greeting; If *John Underhill* ſhall give you ſecurity to proſecute his ſuit, then put by ſurety and ſafe pledges, *John Durham*, late of *Willerſey* in the county of *Glouceſter*, yeoman, that he be before us from the day of *Eaſter* in one month wherever we ſhall then be in *England*, to ſhew why with force and arms, three meſſuages, five hundred acres of land, two hundred acres of meadow, and two hundred acres of paſture, with the appur-

appurtenances, in *Treddington*, in your county, he broke and entered, and him the ſaid *John Underhill* from the poſſeſſion and occupation of the ſaid tenements, expelled and amoved, and the ſame *John Underhill* from the poſſeſſion and occupation of the ſaid tenements, ſo expelled and amoved, for a long time kept out, and alſo all the iſſues and profits of the ſame tenements, of the yearly value of two hundred pounds, for all the time aforeſaid, to the proper uſe of him the ſaid *John Durham*, received and had; and committed other outrages upon him, to the great damage of him the ſaid *John Underhill*, and againſt our peace, and have there the names of the pledges and this writ; witneſs ourſelf at *Weſtminſter* the 12th day of *April*, in the thirteenth year of our reign; which being read and heard, the ſame *John Durham* prays judgment of the writ aforeſaid, becauſe he ſays that there is not any ſuch form of a writ of treſpaſs in the regiſter of writs, as the form of the writ aforeſaid, and that that writ varies from the ſaid regiſter of writs in this, that it doth not appear that the meſſuages and lands were the meſſuages and lands of the ſaid *John Underhill*, and this he is ready to verify; wherefore he prays judgment of the writ aforeſaid, and that the ſaid writ

No ſuch writ in the Regiſter.

may be quaſhed, *&c. This plea on demurrer was over-ruled.*

And the ſaid *John Durham* by *J. L.* his attorney, comes and defends the force and injury when, *&c.* and as to the coming with force and arms, the ſaid *John Durham* ſays that he is not guilty thereof; and of this he puts himſelf upon the country, and the ſaid *John Underhill* thereof likewiſe, *&c.* and as to the reſidue of the treſpaſs aforeſaid, above ſuppoſed to be committed, the ſame *John Durham* ſays that the ſaid *John Underhill* ought not to have or maintan his action aforeſaid thereof againſt him, becauſe he ſays that the meſſuages aforeſaid, as alſo the places aforeſaid, in which the treſpaſs aforeſaid is above ſuppoſed to be committed, are, and at the time when the ſaid treſpaſs is ſuppoſed to be committed were, one meſſuage called *White-houſe*, one other meſſuage called *Black-houſe*, one other meſſuage called *Red-houſe*, and five hundred acres of land called *Black-lands*, two hundred acres of meadow called *White-lands*, and two hundred acres of paſture called *Red-lands*, with the appurtenances in *Treddington* aforeſaid, which ſaid tenements with the appurtenances are, and at the ſame

Common bar, becauſe the plaintiff doth not name the cloſes. 2. Co 18. B. Pract. Reg. 596. 602

ſame time when, &c. and alſo for all the time aforeſaid, in the declaration aforeſaid mentioned, were, the proper grounds and freehold of him the ſaid *John Durham*; wherefore the ſaid *John Durham* at the time when, &c. and alſo for all the time aforeſaid, in the declaration aforeſaid mentioned, the ſaid ſeveral meſſuages and parcels of land, meadow and paſture, as the proper meſſuages, lands, meadow and paſture, of him the ſaid *John Durham*, being in the poſſeſſion of the ſaid *John Durham*, broke and entred, and the poſſeſſion and occupation of the ſame for all the time aforeſaid, in the declaration aforeſaid mentioned kept, and the iſſues and profits of the ſaid meſſuages and tenements for all the time aforeſaid, in the declaration aforeſaid mentioned, received and had, as he lawfully might, and this the ſame *John Durham* is ready to verify; wherefore he prays judgment, if the ſaid *John Underhill* ought to have or maintain his action aforeſaid thereof againſt him, &c.

Edw. Northey.

Proceed-

Proceedings on an Action of Treſpaſs in Ejectment, by Original in the Kings Bench.

The original Writ.

GEORGE the ſecond by the grace of God, of *Great-Britain*, *France*, and *Ireland*, King, defender of the faith and ſo forth, to the ſheriff of *Berkſhire* greeting, if *Richard Smith* ſhall give you ſecurity of proſecuting his claim, then put by gage and ſafe pledges *William Stiles*, late of *Newbury*, gentleman, ſo that he be before us on the morrow of *All Souls*, whereſoever we ſhall then be in *England*, to ſhew wherefore with force and arms he entered into one meſſuage with the appurtenances, in *Sutton*, which *John Rogers* Eſq; hath demiſed to the aforeſaid *Richard*, for a term, which is not yet expired, and ejected him from his ſaid farm, and other enormities to him did, to the great damage of the ſaid *Richard*, and againſt our peace, and have you there the names of the pledges, and this writ; witneſs ourſelf at *Weſtminſter*, the twelfth day of *October*,

Si te fecerit ſecurum.

tober, in the twenty-ninth year of our reign.

Pledges of profecution. { *John Doe.* *Richard Roe.*

The within named *William Stiles* is attached by pledges. { *John Den.* *Richard Fen.*

Declaration againſt the caſual Ejector, who gives Notice thereupon to the Tenant in Poſſeſſion.

Michaelmas *the 29th of King* George *the ſecond.*

Declaration. *Berks to wit,* } *WILLIAM Stiles* late of *Newbury*, in the ſaid county, gentleman, was attached to *Richard Smith* of a plea, wherefore with force and arms he entered into one meſſuage, with the appurtenances, in *Sutton*, in the county aforeſaid, which *John Rogers* Eſq; demiſed to the ſaid *Richard Smith*, for a term which is not yet expired, and ejected him from his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *Richard*, and againſt the peace of the Lord the King, *&c.* and whereupon the ſaid *Richard*, by *Robert Martin* his attorney, complains that whereas the ſaid *John Rogers*

Rogers, on the firſt day of *October* in the twenty-ninth year of the reign of the Lord the King, that now is at *Sutton* aforeſaid, had demiſed to the ſame *Richard* the tenement aforeſaid, with the appurtenances, to have and to hold the ſaid tenement, with the appurtenances, to the ſaid *Richard* and his aſſigns, from the feaſt of *St. Michael the Archangel*, then laſt paſt, to the end and term of five years, from thence next following, and fully to be complete and ended, by virtue of which demiſe, the ſaid *Richard*, entered into the ſaid tenement with the appurtenances, and was thereof poſſeſſed, and the ſaid *Richard* being ſo poſſeſſed thereof, the ſaid *William* afterwards, that is to ſay, on the ſaid firſt day of *October*, in the ſaid twenty-ninth year, with force and arms, that is to ſay, with ſwords, ſtaves, and knives, entred into the ſaid tenement, with the appurtenances, which the ſaid *John Rogers* demiſed to the ſaid *Richard*, in form aforeſaid, which is not yet expired, and ejected the ſaid *Richard* out of his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *Richard*, and againſt the peace of the ſaid Lord the King; whereby the ſaid *Richard* ſaith that he is injured and damaged to the value of twenty pounds, and thereupon he brings ſuit, *&c.*

Martin

Martin for the plaintiff, *Peters* for the defendant.

Pledges of proſecution. { *John Doe.* / *Richard Roe.*

Mr. George Saunders.

Notice. I Am informed that you are in poſſeſſion of, or claim title to, the premiſes mentioned in this declaration of ejectment, or to ſome part thereof, and I being ſued in this action as a caſual ejector, and having no claim or title to the ſame, do adviſe you to appear next *Hilary* term in his Majeſty's court of *Kings Bench*, at *Weſtminſter*, by ſome attorney of that court, and then and there, by a rule to be made of the ſame court, to cauſe yourſelf to be made defendant in my ſtead, otherwiſe I ſhall ſuffer judgment to be entered againſt me, and you will be turned out of poſſeſſion.

Your loving friend,

William Stiles.

5th *January*, 1756.

The

The Rule of Court.

Hilary *Term, in the twenty-ninth Year of King* George *the Second.*

Berks, to wit. IT is ordered by the court, by the aſſent of both parties, and their attornies, that *George Saunders*, gentleman, may be made defendant, in the place of the now defendant, *William Stiles*, and ſhall immediately appear to the plaintiff's action, and ſhall receive a declaration in a plea of treſpaſs and ejectment of the tenements in queſtion, and ſhall immediately plead thereto Not guilty, and upon the trial of the iſſue ſhall confeſs leaſe, entry, and ouſter, and inſiſt upon his title only, and if upon trial of the iſſue the ſaid *George* do not confeſs leaſe, entry, and ouſter, and by reaſon thereof the plaintiff cannot proſecute his writ, then the taxation of coſts upon ſuch non proſs ſhall ceaſe, and the ſaid *George* ſhall pay ſuch coſts to the plaintiff as by the court of our Lord the King here ſhall be taxed and adjudged for ſuch his default in non-performance of this rule, and judgment ſhall be entered againſt the ſaid *William Stiles*, now the caſual ejector,

Smith againſt Stiles, for one meſſuage, with the appurtenances, in Sutton, on the demiſe of John Rogers.

by default. And it is further ordered, that if upon the trial of the ſaid iſſue a verdict ſhall be given for the defendant, or if the plaintiff ſhall not proſecute his writ upon any other cauſe than for the non confeſſing leaſe, entry, and ouſter, as aforeſaid, then the leſſor of the plaintiff ſhall pay coſts, if the plaintiff himſelf doth not pay them. By the court.

Martin, for the plaintiff.
Newman, for the defendant.

The Record.

Pleas before the Lord the King at Weſtminſter, *of the Term of St.* Hilary, *in the twenty-ninth Year of the Reign of the Lord* George *the Second, by the Grace of* God *of* Great Britain, France, *and* Ireland, *King, Defender of the Faith*, &c.

Berks, } GEORGE *Saunders*, late of *Sut-*
to wit. } *ton*, in the county aforeſaid, gentleman, was attached to anſwer *Richard Smith*, of a plea, wherefore with force and arms he entred into one meſſuage, with the appurtenances, in *Sutton*, which *John Rogers*, Eſq; hath demiſed to the ſaid *Richard*, for a term

term which is not yet expired, and ejected him from his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *Richard*, and againſt the peace of the Lord the King that now is; and whereupon the ſaid *Richard*, by *Robert Martin*, his attorney, complains, that whereas the ſaid *John Rogers*, on the firſt day of *October*, in the twenty-ninth year of the reign of the Lord the King that now is, at *Sutton* aforeſaid, had demiſed to the ſame *Richard* the tenement aforeſaid, with the appurtenances, to have and to hold the ſaid tenement, with the appurtenances, to the ſaid *Richard*, and his aſſigns, from the feaſt of St. *Michael* the archangel then laſt paſt to the end and term of five years from thence next following, and fully to be complete and ended, by virtue of which demiſe the ſaid *Richard* entered into the ſaid tenement, with the appurtenances, and was thereof poſſeſſed, and the ſaid *Richard* being ſo poſſeſſed thereof, the ſaid *George* afterwards, that is to ſay, on the firſt day of *October*, in the ſaid twenty-ninth year, with force and arms, that is to ſay, with ſwords, ſtaves, and knives, entered into the ſaid tenement, with the appurtenances, which the ſaid *John Rogers* demiſed to the ſaid *Richard*,

Declaration or count.

in form aforeſaid, for the term aforeſaid, which is not yet expired, and ejected the ſaid *Richard* out of his ſaid farm, and other wrongs to him did, to the great damage of the ſaid *Richard*, and againſt the peace of the ſaid Lord the King, whereby the ſaid *Richard* ſaith that he is injured, and endamaged, to the value of twenty pounds, and thereupon he brings ſuit. (and good proof) And the ſaid *George Saunders*, by *Charles Newman*, his attorney, comes and defends the force and injury, when (and where it ſhall behove him) and ſaith that he is in no wiſe guilty of the treſpaſs and ejectment aforeſaid, as the ſaid *Richard* above complains againſt him, and thereof he puts himſelf upon the country, and the ſaid *Richard* doth likewiſe the ſame. Therefore let a jury come thereupon before the Lord the King, on the octave of the purification of the Bleſſed Virgin *Mary*, whereſoever he ſhall then be in *England*, (who neither are of kin to the ſaid *Richard*, nor to the ſaid *George*) to recognize (whether the ſaid *George* be guilty of the treſpaſs and ejectment aforeſaid) becauſe as well (the ſaid *George* as the ſaid *Richard*, between whom the difference is, have put themſelves on the

Defence.

Plea Not guilty.

Iſſue.

Venire awarded.

the ſaid jury) the ſame day is there given to the parties aforeſaid. Afterwards the proceſs therein being continued between the ſaid parties of the plea aforeſaid by the jury, is put between them in reſpite before the Lord the King until the day of *Eaſter* in fifteen days, whereſoever the ſaid Lord the King ſhall then be in *England*; unleſs the juſtices of the Lord the King, aſſigned to take aſſizes in the county aforeſaid, ſhall have come before that time, to wit, on *Monday*, the eighth day of *March*, at *Reading*, in the ſaid county, by the form of the ſtatute (in that caſe provided) by reaſon of the default of the jurors (ſummoned to appear as aforeſaid). At which day, before the Lord the King at *Weſtminſter*, come the parties aforeſaid, by their attornies aforeſaid, and the aforeſaid juſtices of aſſize, before whom (the jury aforeſaid came), ſent here their record, before them had, in theſe words, to wit: Afterwards, at the day and place within contained, before *Heneage Legge*, Eſq; one of the barons of the exchequer of the Lord the King, and Sir *John Eardley Wilmot*, Knight, one of the juſtices of the ſaid Lord the King, aſſigned to hold pleas before the King himſelf, juſtices of the ſaid Lord the King, aſſigned to take aſ-

Reſpite for default of jurors.

Niſi prius.

Poſtea.

ſizes in the county of *Berks*, by the form of the ſtatute (in that caſe provided), come as well the within named *Richard Smith*, as the within written *George Saunders*, by their attornies, within contained, and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Charles Holloway*, *John Hooke*, *Peter Graham*, *Henry Cox*, *William Brown*, and *Francis Oakley*, come, and are ſworn upon that jury; and becauſe the reſt of the jurors of the ſame jury did not appear, therefore others of the by-ſtanders being choſen by the ſheriff, at the requeſt of the ſaid *Richard Smith*, and by the command of the juſtices aforeſaid, are appointed anew, whoſe names are affixed to the panel within written, according to the form of the ſtatute in ſuch caſe made and provided; which ſaid jurors, ſo appointed anew, to wit, *Roger Bacon*, *Thomas Small*, *Charles Pye*, *Edward Hawkins*, *Samuel Roberts*, and *Daniel Parker*, being likewiſe called, come, and, together with the other jurors aforeſaid, before impanelled and ſworn, being elected, tried, and ſworn to ſpeak the truth of the matter within contained, upon their oath ſay, that the aforeſaid *George Saunders* is guilty of the treſpaſs and ejectment within written, in

Tales de circumſtantibus.

Verdict for the plaintiff.

in manner and form as the aforeſaid *Richard Smith* within complains againſt him, and aſſeſs the damages of the ſaid *Richard Smith*, on occaſion of that treſpaſs and ejectment, beſides his coſts and charges which he hath been put unto about his ſuit in that behalf, to twelve-pence, and for thoſe coſts and charges, to forty ſhillings; whereupon the ſaid *Richard Smith*, by his attorney aforeſaid, prayeth judgment againſt the ſaid *George Saunders*, in and upon the verdict aforeſaid, by the jurors aforeſaid given in the form aforeſaid; and the ſaid *George Saunders*, by his attorney aforeſaid, ſaith, that the court here ought not to proceed to give judgment upon the ſaid verdict, and prayeth that judgment againſt him the ſaid *George Saunders*, in and upon the verdict aforeſaid, by the jurors aforeſaid given, in the form aforeſaid, may be ſtayed, by reaſon that the ſaid verdict is inſufficient and erroneous, and that the ſame verdict may be quaſhed, and that the iſſue aforeſaid may be tried anew, by other jurors, to be afreſh impanelled. And becauſe the court of the Lord the King here is not yet adviſed of giving their judgment of and upon the premiſes, therefore day thereof is given as well to the ſaid *Richard Smith*

Motion in arreſt of judgment.

Continuance.

as the ſaid *George Saunders*, before the Lord the King, until the morrow of the *Aſcenſion* of our Lord, whereſoever the ſaid Lord the King ſhall then be in *England*, to hear their judgment of and upon the premiſes, for that the court of the Lord the King is not yet adviſed thereof. At which day, before the Lord the King at *Weſtminſter*, come the parties aforeſaid, by their attornies aforeſaid, upon which the record and matters aforeſaid having been ſeen, and by the court of the Lord the King now here fully underſtood, and all and ſingular the premiſes having been examined, and mature deliberation being had thereupon, for that it ſeems to the court of the Lord the King now here, that the verdict aforeſaid is in no wiſe inſufficient or erroneous, and that the ſame ought not to be quaſhed, and that no new trial ought to be had of the iſſue aforeſaid. Therefore it is conſidered, that the ſaid *Richard* do recover againſt the ſaid *George* his term yet to come of and in the ſaid tenements, with the appurtenances, and the ſaid damages aſſeſſed by the ſaid jury, in form aforeſaid, and alſo twenty-ſeven pounds ſix ſhillings and eight pence, for his coſts and charges aforeſaid,

Opinion of the court.

Judgment for the plaintiff.

Coſts.

by

by the court of the Lord the King here awarded to the ſaid *Richard*, with his aſſent, by way of increaſe; which ſaid damages in the whole amount to twenty-nine pounds ſeven ſhillings and eight pence. And let the ſaid *George* be taken (until he maketh fine to the Lord the King). And hereupon the ſaid *Richard*, by his attorney aforeſaid, prayeth a writ of the Lord the King to be directed to the ſheriff of the county aforeſaid, to cauſe him to have poſſeſſion of his term aforeſaid yet to come of and in the tenements aforeſaid, with the appurtenances, and it is granted unto him, returnable before the Lord the King, on the morrow of the *Holy Trinity*, whereſoever he ſhall then be in *England*; at which day, before the Lord the King at *Weſtminſter*, cometh the ſaid *Richard*, by his attorney aforeſaid, and the ſheriff, that is to ſay, Sir *Thomas Reeve*, Knight, now ſendeth, that he, by virtue of the writ aforeſaid to him directed, on the ninth day of *June* laſt paſt, did cauſe the ſaid *Richard* to have his poſſeſſion of his term aforeſaid, yet to come of and in the tenements aforeſaid, with the appurtenances, as he was commanded.

Capiatur pro fine.

Writ of poſſeſſion.

And return.

Pleas

Pleas before the Lord the King at Weſtminſter, *of the Term of Saint* Hilary, *in the ſixth Year of the Reign of the Lord* William *the Third, King of* England, &c.

Leigh v. Brace. 2 Ld. Raym. 101. Count in ejectment.

Worceſterſhire, to wit. } BE it remembred, that on *Wedneſday* next after eight days of St. *Hilary*, in this ſame term, before the Lord the King at *Weſtminſter*, came *George Leigh*, by *Thomas Callow*, his attorney, and brought here into the court of our ſaid Lord the King then there, his certain bill againſt *Samuel Brace*, in cuſtody of the marſhal, *&c.* of a plea of treſpaſs and ejectment, and there are pledges of proſecuting (to wit) *John Doe* and *Richard Roe*, which ſaid bill follows in theſe words, (to wit) *Worceſterſhire*, (to wit) *George Leigh* complains of *Samuel Brace*, in the cuſtody of the marſhal of the *Marſhalſea* of the Lord the King, being before the King himſelf, for that (to wit) whereas one *John Cookes*, on the firſt day of *October*, in the ſixth year of the reign of the Lord *William*, the now King, and Lady *Mary*, late Queen of *England*, *&c.* at the pariſh of *Bromſgrove*, in the county aforeſaid, demiſed, granted,

granted, and to farm let to the aforeſaid *George* one meſſuage, thirty acres of land, ten acres of meadow, and twenty acres of paſture, with the appurtenances, ſituate, lying and being in the pariſh of *Bromſgrove* aforeſaid, in the county aforeſaid, to have and to hold the tenements aforeſaid, with the appurtenances, to him the ſaid *George* and his aſſigns, from the feaſt-day of St. *Michael* the archangel then laſt paſt unto the full end and term of ſeven years from thence next following, and fully to be complete and ended, by virtue of which ſaid demiſe the ſaid *George* entered into the tenements aforeſaid, with the appurtenances, and was poſſeſſed thereof until the aforeſaid *Samuel* afterwards, to wit, on the ſame firſt day of *October*, in the ſixth year aboveſaid, with force and arms, into the tenements aforeſaid, with the appurtenances, in and upon the poſſeſſion of him the ſaid *George* entered thereupon, and him the ſaid *George* from his farm aforeſaid, his ſaid term thereof not being ended, ejected, expelled, and removed, and him the ſaid *George* from his poſſeſſion aforeſaid thereof kept out, and yet keeps out, and other wrongs to the ſaid *George* then and there did, againſt the peace of the ſaid Lord

the

the now King and the late Lady the Queen, and to the damage of him the ſaid *George* of ten pounds, and thereupon he brings ſuit, *&c.*

Not guilty. And the ſaid *Samuel*, by *John Hancock* his attorney, comes and defends the force and injury when, *&c.* and ſaith that he is not guilty thereof, and of this he puts himſelf upon the country; and the ſaid *George* likewiſe. Therefore let a jury come before the King at *Weſtminſter*, on *Tueſday* next after eight days of the purification of the bleſſed Virgin *Mary*, and who neither *&c.* to take cognizance *&c.* becauſe as well *&c.* the ſame day is given to the party aforeſaid there *&c.* afterwards the proceſs thereupon is continued, between the parties of the plea aforeſaid, by the jury being thereupon reſpited between them, before the Lord the King at *Weſtminſter*, until *Wedneſday* next after fifteen days of *Eaſter* from thence next following,

Niſi prius. unleſs the juſtices of the Lord the King, aſſigned to take the aſſizes in the county aforeſaid, ſhall firſt come on *Saturday* the 2d day of *March*, at *Worceſter* in the county aforeſaid, by form of the ſtatute *&c.* for want of jurors *&c.* at which day before the Lord the King, at *Weſtminſter*, cometh the ſaid *George*, by his ſaid attorney, and

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the ſaid juſtices before whom &c. have ſent here their record, had before them in theſe words (to wit) afterwards on the day and at the place within contained, before *Giles Eyre* Knight, one of the juſtices of the Lord the King, aſſigned to hold pleas before the king himſelf, and *Thomas Breton* Eſq; to him the ſaid *Giles Eyre* and *William Gregory*, Knight, another juſtice of the ſaid Lord the King, aſſigned to hold pleas before the King himſelf, juſtices of the ſaid Lord the King, aſſigned to take the aſſizes in the county of *Worceſter*, by form of the ſtatute, &c. for this time aſſociated, the preſence of the ſaid *William Gregory* not being expected, by virtue of the writ of the Lord the King of *Si non omnes*, &c, come as well the within named *George Leigh*, as the within written *Samuel Brace*, by their attornies within contained; and the jurors of the jury, whereof mention is within named, being called come, who being choſen, tried, and ſworn to ſpeak the truth concerning the matters within contained, ſay upon their oath, that one *Walter Brace* was ſeiſed of the tenements, in the declaration within mentioned, in his demeſne as of fee, and being ſo ſeiſed thereof, the ſaid *Walter Brace*, before the ſaid time when, &c. (to wit) on the 25th day of *July*, in the 20th

Poſtea.

Special Verdict.

20th year of the reign of the Lord *James* the firſt, late King of *England*, *&c.* by his certain charter, ſealed with the ſeal of him the ſaid *Walter*, and to the jury aforeſaid, in evidence ſhewn, the date whereof is the ſame day and year, enfeoffed *Thomas Wilkes* and *Thomas Flavell*, of and in the tenements aforeſaid, with the appurtenances, to have and to hold to them the ſaid *Thomas* and *Thomas*, and their heirs, to the uſes in the ſaid charter ſpecified, the tenor of which ſaid charter follows in theſe words: To all chriſtian people, to whom this preſent writing ſhall come, *Walter Brace* of *Forkbury*, in the pariſh of *Bromſgrove*, in the county of *Wigorn*, yeoman, ſendeth greeting: Know ye, that I the ſaid *Walter Brace*, for the natural love and affection that I bear to my ſon *Thomas Brace*, and for diverſe other conſiderations me eſpecially moving, have given, granted, enfeoffed, and confirmed, and by theſe preſents do give, grant, enfeoff, and confirm unto *Thomas Wilkes* of *Forbury* aforeſaid, yeoman, and unto *Thomas Flavell* of *Bromſgrove* aforeſaid, clerk, their heirs and aſſigns, all that dwelling houſe or tenement, with the appurtenances, which I the ſaid *Walter Brace* purchaſed of *Stephen Dipple*, of *Bromſgrove* aforeſaid, and is ſituate in the

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high ſtreet of *Bromſgrove*, between the lands of *Edward Seabright* Eſq; and the lands of *Gilbert Butler* Gentleman, and now in the tenure or occupation of *Walter Roſe*; and alſo one other houſe or cottage with the appurtenances, ſituate and being in *Forkbury* aforeſaid, wherein *Gilbert Weſtley* now dwelleth, together with the cloſe wherein the ſaid cottage ſtandeth, containing by eſtimation one acre and an half, or thereabouts, be the ſame more or leſs, one other cloſe of paſture called by the name of *Wherns-cloſe*, containing by eſtimation ſix acres, or thereabouts, one other cloſe of paſture called by the name of *Woodſell*, containing by eſtimation, five acres or thereabouts, two other cloſes called the *Slade-crofts* containing by eſtimation ſix acres or thereabouts, one day mowth of meadow ground lying in *Long-meadow*, next unto the eſtate there, and two fleeting acres lying in *Broad-meadow*; with all ways, waters, woods, underwoods, commons, profits, commodities, advantages, and hereditaments whatſoever, unto the ſaid premiſes and every part and parts thereof belonging, or in any wiſe appertaining, all which ſaid premiſes are ſituate, lying, and being in the ſaid pariſh of *Bromſgrove* and county of *Wigorn*; to have and to hold the ſaid

ſaid houſes or tenements, lands, and all and ſingular other the premiſes, with the appurtenances, and every part thereof, to the ſaid *Thomas Wilkes* and *Thomas Flavell*, their heirs and aſſigns, to the uſes, intents, and behoofs herein after by theſe preſents mentioned and declared, and to no other uſe, intent, or purpoſe, that is to ſay, to the uſe and behoof of me the ſaid *Walter Brace*, for and during my natural life, and after the deceaſe of me the ſaid *Walter Brace*, to the uſe and behoof of the aforeſaid *Thomas Brace*, my ſon, and his heirs for ever; and for default of iſſue of the body of the ſaid *Thomas Brace*, then to the uſe and behoof of the right heirs of me the ſaid *Walter Brace* for ever, to be holden of the chief Lord or Lords of the fee or fees of the premiſes, by the rents and ſervices thereof firſt due, and of right accuſtomed; and I verily the ſaid *Walter Brace* and my heirs, the ſaid houſes or tenements, lands, and all and ſingular other the premiſes, with the appurtenances, and every part and parcel thereof, unto the ſaid *Thomas Wilkes* and *Thomas Flavell* and their heirs, ſhall and will warrant and for ever defend by theſe preſents; in witneſs whereof, I the ſaid *Walter Brace*, unto this my preſent writing indented, have ſet my hand and ſeal, the 25th day of *July*, in the reign

of our Sovereign Lord King *James*, by the grace of God of *England*, *France*, and *Ireland*, King, defender of the faith *&c.* the twentieth, and of *Scotland* the fifty-fifth, *Annoque Domini* 1622. By virtue whereof, and alſo by force of the act of parliament, for transferring of uſes into poſſeſſion, made and provided, the ſaid *Walter* was ſeiſed of the premiſes, in the ſaid charter mentioned, being the premiſes aforeſaid, in the declaration aforeſaid ſpecified, as of his freehold for the term of his life, the remainder thereof belonging as the law requireth. And the ſaid jurors further upon their oath ſay, that the aforeſaid *Walter Brace*, afterwards and before the ſaid time when *&c.* died and that the ſaid *Thomas Brace*, the ſon of him the ſaid *Walter*, entered into the tenements in the declaration within mentioned, and was ſeiſed thereof as the law requireth; and that he the ſaid *Thomas Brace* being ſo ſeiſed thereof, in due manner and form made his laſt will and teſtament, in writing, on the 16th day of *April*, in the thirty-third year of the reign of *Charles* the ſecond, late King of *England*, *&c.* which ſaid will follows in theſe words: In the name of God amen, the 16th day of *April*, in the thirty-third year of the

reign of our Sovereign Lord *Charles* the ſecond, by the grace of God of *England*, *Scotland*, *France*, and *Ireland*, King, defender of the faith &c. *Annoque Domini* 1681; I *Thomas Brace* of *Forkbury*, in the pariſh of *Bromſgrove*, in the county of *Worcorn*, yeoman, being weak of body, but of ſound and perfect memory and underſtanding, thanks be to God; calling to mind the uncertain ſtate of this life, and being deſirous to ſettle things in order for the leaving the world, I have lived in the enjoyment thereof till a very conſiderable age, do make this my laſt will and teſtament in manner following, revoking by theſe preſents all and every other teſtament or teſtaments, will and wills, heretofore by me made, either by word or writing, and this to be taken only for my laſt will and teſtament; firſt, I bequeath my ſoul unto God my Creator, and to Jeſus Chriſt my Redeemer, and my body to the earth from whence it was taken, to be decently buried in ſuch chriſtian manner, as to my executor, herein after named, ſhall be thought moſt convenient, there to reſt until my ſoul and body ſhall meet again, and be joined together at the reſurrection; and touching ſuch temporal eſtate as God has been pleaſed to beſtow upon me, I do

order, give, and bequeath the ſame in manner following: *Imprimis*, I do hereby give and deviſe unto my ſon *Samuel Brace*, during the term of his natural life, eight pounds a year, of lawful money of *England*, to be paid him quarterly, from the time of my deceaſe, by my executor hereinafter mentioned, he my ſaid ſon *Samuel* permitting *William Fowkes* and *Jonathan Wall*, their executors, adminiſtrators, and aſſigns, peaceably and quietly to hold and enjoy the lands and tenements and premiſes, to them by me ſeverally leaſed, at and under the covenants ſpecified in their ſeveral leaſes; but if he moleſt or hinder the ſaid *Jonathan Wall* and *William Fowkes* of their quiet enjoying the premiſes, or any part thereof, to them by me deviſed, then my will is, that my ſaid ſon *Samuel* have four pounds a year only during his life, paid him quarterly by my executor, in full diſcharge and ſatisfaction of the ſaid eight pounds a year. *Item*, I give and bequeath unto my daughter *Elizabeth Brace* three hundred pounds of like money of *England*, as followeth (*viz.*) two hundred pounds within a year, and one hundred pounds more, the remaining part of the ſaid three hundred pounds,

within two years after my deceaſe, if ſhe ſo long live, or bear any iſſue of her body, with all my goods that ſhall be in my houſe at *Whern's Aſh*, at my deceaſe. *Item*, I give to my grandſon *Henry Cooks*, during his natural life, all that my meſſuage or tenement, in *Forkbury*, with two acres of land to the ſame belonging, in the poſſeſſion of one *William Perkes*, and four more acres of land to the ſame adjoining, in the poſſeſſion of one *William Oxford*; the rents and profits of the ſaid meſſuage, and ſeveral parcels of land, to be received and enjoyed by my executors till my ſaid grandchild ſhall attain to the age of twenty-one years, for the maintenance and education of my ſaid grandchild. *Item*, I give and deviſe to my grandchildren *Mary* and *Hannah Cooks*, all thoſe my cloſes of land in *Catſil*, adjoining to the common field there, called *Intall-field*, containing by eſtimation about four acres, and three ſeveral parcels of land in *Intall-field*, containing by eſtimation three acres. And laſtly I give and deviſe unto *John Cooks*, my ſon-in-law, whom I make executor of this my laſt will, and to his heirs on the body of my daughter *Rebecca* begotten or to be begotten, all my eſtate, lands, tenements,

and

and houſes whatſoever, in *Forkbury* and *Catſill*, in the ſaid pariſh of *Bromſgrove*, and county of *Worceſter*, and not herein before deviſed, and the reverſion of the ſaid meſſuage and lands herein before bequeathed unto my ſaid grandchild *Henry Cooks*, from and after his deceaſe paying the legacies and annuities in this my will comprized, *&c.* And the ſaid jurors further upon their oath ſay, that the ſaid *Thomas Brace* afterwards died ſeiſed of the tenements aforeſaid, with the appurtenances as aforeſaid, and that the tenements aforeſaid, with the appurtenances in the declaration aforeſaid ſpecified, and the tenements aforeſaid, in the will aforeſaid before recited, and by the ſame expreſſed to be deviſed to the aforeſaid *John Cooks* in poſſeſſion, are the ſame tenements, with the appurtenances, and not others, or divers, and that the ſaid *John Cooks*, after the death of him the ſaid *Thomas Brace*, into the tenements aforeſaid, being the tenements in queſtion, entered, by colour of the will aforeſaid, and was thereof ſeiſed as the law requireth. And the ſaid jurors upon their oath further ſay, that the ſaid *John Cooks*, after the death of the ſaid *Thomas Brace*, paid as well all and ſingular the legacies and annuities in the ſame will

mentioned and comprized, at ſuch times, and in the manner and form as in the ſame will is directed, as all the juſt debts and funeral expences of the ſaid *Thomas Brace*, according to the true intention of the ſaid will. And the jurors aforeſaid upon their ſaid oath further ſay, that the within named *Samuel Brace*, the now defendant, is the ſon and heir of the body of the ſaid *Thomas Brace*, and that the ſaid *Samuel Brace*, after the death of the ſaid *Thomas*, his father, entered into the tenements aforeſaid, with the appurtenances, and was ſeiſed thereof as the law requireth. And the aforeſaid *John Cook*, afterwards and before the ſaid time, when, *&c.* to wit, on the within written firſt day of *October*, in the ſixth year of the reign of the Lord *William*, now King of *England*, and of the Lady *Mary*, late Queen of *England*, *&c.* at the pariſh of *Bromſgrove* aforeſaid, within written, in the county aforeſaid, into the tenements aforeſaid, with the appurtenances, entered, and then and there demiſed, granted, and to farm let to the ſaid *George* the tenements aforeſaid, with the appurtenances, to have and to hold the tenements aforeſaid, with the appurtenances, to the ſaid *George* and his aſſigns, from the feaſt-day of St. *Mi-*

chael

chael the archangel then laſt paſt unto the full end and term of ſeven years from thence next following, and fully to be complete and ended, by virtue of which ſaid demiſe he the ſaid *George* entered into the tenements aforeſaid, with the appurtenances, and was thereof poſſeſſed until the ſaid *Samuel*, the defendant, afterwards, to wit, on the ſame firſt day of *October*, in the ſixth year aboveſaid, into the tenements aforeſaid, with the appurtenances, in and upon the poſſeſſion of him the ſaid *George* thereupon entered, and him the ſaid *George* from his farm aforeſaid, his term not being yet ended, ejected, expelled, and removed him the ſaid *George* from his poſſeſſion aforeſaid, thereof kept out, and yet keeps out. But, whether upon the whole matter aforeſaid, by the jurors aforeſaid in form aforeſaid found, the ſaid *Samuel Brace*, the now defendant, is guilty of the treſpaſs and ejectment within written, in manner and form as the ſaid *George* within complains againſt him, or not, the jurors aforeſaid are wholly ignorant, and thereupon pray the advice and conſideration of the court, *&c.* And if upon the whole matter aforeſaid, by the jurors aforeſaid in form aforeſaid found, it ſhall ſeem to the court

of the Lord the King here that the ſaid *Samuel Brace*, the now defendant, is guilty of the treſpaſs and ejectment within written, in manner and form as the ſaid *George Leigh* within complains againſt him, then the ſaid jurors further upon their oath ſay, that the ſaid *Samuel Brace* is guilty of the treſpaſs and ejectment within written, in manner and form as the ſaid *George Leigh* within complains againſt him, and they aſſeſs the damages of him the ſaid *George Leigh* by the occaſion within written, beſides his coſts and charges by him about his ſuit in this behalf laid out, to ſix pence, and for thoſe coſts and charges to forty ſhillings. But if, upon the whole matter aforeſaid, by the jurors aforeſaid in form aforeſaid found, it ſhall ſeem to the court here that the aforeſaid *Samuel Brace*, the now defendant, is not guilty of the treſpaſs and ejectment within written, in manner and form as the ſaid *George* within complains againſt him, then they the ſaid jurors further ſay, upon their ſaid oath, that the ſaid *Samuel Brace* is not guilty of the treſpaſs and ejectment in the declaration within written ſpecified, as the ſaid *Samuel Brace* within for himſelf, in pleading, hath alledged; and becauſe the court of the Lord the King now here

here is not yet adviſed of giving their judgment of and upon the premiſes, day is thereupon given to the parties aforeſaid, before the Lord the King at *Weſtminſter*, until —— next after —— to hear their judgment of and upon the premiſes, for that the court of the ſaid Lord the King now here thereof is not yet, *&c.*

Middleſex, *to wit*, } *LAWRENCE Legawe*, late of *London*, gentleman, was attached to anſwer *Thomas Leake*, gentleman, in a plea, wherefore with force and arms he entered into three meſſuages, thirty acres of land, twenty acres of meadow, and ten acres of paſture, with the appurtenances, in *Hadley*, which the Honourable *Vere Booth*, ſpinſter, to the ſaid *Thomas* demiſed, for a term which is not yet paſſed, entered, and him from his farm aforeſaid ejected, and committed other outrages on him, to the great damage of the ſaid *Thomas*, and againſt the peace of the now Lady the Queen, *&c.* and whereon the ſaid *Thomas Leake*, by *John Lilly*, his attorney, complains that whereas the ſaid *Vere Booth*, on the twentieth day of *November*, in the firſt year of the reign of the Lady *Anne*, now Queen of

Leake v. Legawe. Declaration by original to be delivered to the tenant to compel him to appear. Salk. 432.

of *England*, *&c.* demiſed to the ſame *Thomas* the tenements aforeſaid, with the appurtenances, to have and to hold the tenements aforeſaid, with the appurtenances, to the ſame *Thomas*, and his aſſigns, from the ſeventeenth day of the ſame month of *November* then laſt paſt unto the end and term of five years from thence next enſuing, and fully to be complete and ended, by virtue of which ſaid demiſe the ſame *Thomas* into the tenements aforeſaid, with the appurtenances, entered, and was thereof poſſeſſed, and he the ſaid *Thomas* being ſo thereof poſſeſſed, the ſaid *Lawrence* afterwards, to wit, on the ſame twentieth day of *November*, in the firſt year aboveſaid, with force and arms, *&c.* into the tenements aforeſaid, with the appurtenances, which the ſaid *Vere Booth* to the ſame *Thomas* in form aforeſaid demiſed for the term aforeſaid, which is not yet paſt, entered, and him the ſaid *Thomas* from his farm aforeſaid ejected, and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereby he ſays that he is injured, and hath ſuſtained damage to the value of forty pounds, and therefore he brings ſuit, *&c.*

Wil-

Hertford, to wit, } *WILLIAM Fiſher* complains of *James Wigg* and *John Nicholls*, which ſaid *John* is under the age of twenty-one years, to wit, of the age of ſeventeen years, in the cuſtody of the marſhal, *&c.* for this, to wit, that whereas *J. Higby*, *Richard Higby*, *Thomas Higby*, *Thomas Drew* and *Dorothy*, his wife, on the firſt day of *January*, in the ninth year of the reign of the Lord *William* the Third, now King of *England*, *&c.* at the pariſh of *B.* in the county aforeſaid, by their certain indenture then and there made between them the ſaid *J. Higby*, *Richard Higby*, *&c.* on the one part, and the ſaid *William Fiſher* of the other part, one part of which ſaid indenture, ſealed with the ſeals of them the ſaid *J. Higby*, *Richard Higby*, *&c.* the ſame *William Fiſher* here in court produces, bearing date the ſame day and year, did demiſe, grant, and to farm let to the ſame *William Fiſher* three parts in five parts to be divided of one meſſuage, fifty acres of land, fifty acres of meadow, and fifty acres of paſture, with the appurtenances, in the pariſh of *B.* aforeſaid, in the county aforeſaid, to have and to hold the ſame three parts of the tenements aforeſaid in five

Fiſher v. Wigg & al. T. 11 W. 3. Roll. 1650. Ejectment on a double demiſe againſt tenants in common for four parts of lands, &c. in five parts to be divided. Salk. 391. Pract. Reg. 454, 560. The demiſe of three fifth parts. Lilly p. 205.

five parts to be divided to the ſame *William Fiſher* and his aſſigns, from the feaſt of the birth of our Lord then laſt paſt unto the full end and term of ſeven years from thence next enſuing, and fully to be complete and ended, yielding and paying therefore to the ſame *J. H. R. H. &c.* during the term aforeſaid, the yearly rent of ten ſhillings, as by the ſame indenture, among other things, is more fully manifeſt, and appears: and that by a certain other indenture, made at the pariſh aforeſaid, in the county aforeſaid, on the ſaid firſt day of *January*, in the ninth year aboveſaid, between *J. F.* and *E.* his wife, of the one part, and the ſaid *William Fiſher*, of the other part, which other part of the ſaid other indenture, ſealed with the ſeals of them the ſaid *J. F.* and *E.* his wife, *A. S.* and *C. S.* the ſame *William Fiſher* here in court produces, bearing date the ſame day and year, the ſame *J. F.* and *E.* his wife, *A. S.* and *C. S.* did demiſe, grant, and to farm let to the ſame *William Fiſher* one other fifth part in five parts to be divided of the tenements aforeſaid, with the appurtenances, to have and to hold the ſame fifth part of the ſaid tenements, with the appurtenances,

The demiſe one fifth part.

ces, to the ſame *William Fiſher* and his aſſigns, from the ſaid feaſt of the birth of our Lord then laſt paſt unto the full end and term of ſeven years from thence next enſuing, and fully to be complete and ended, yielding and paying therefore to the ſaid *J. F.* and *E.* his wife, *A.* and *C.* during the term aforeſaid the yearly rent of five ſhillings, as by the ſame indenture is alſo more fully manifeſt, and appears; by virtue of which ſaid ſeveral demiſes, the ſame *William Fiſher* into the tenements aforeſaid, with the appurtenances, entered, and was thereof poſſeſſed until the ſaid *James Wigg* and *John Nicholls* afterwards, to wit, on the ſaid firſt day of *January*, in the ninth year aboveſaid, with force and arms, *&c.* into the tenements aforeſaid, with the appurtenances, in and upon the poſſeſſion of him the ſaid *William Fiſher*, thereof entered, and him the ſaid *William Fiſher* from his ſeveral farms aforeſaid, his terms aforeſaid therein not ended, ejected, expelled, and amoved, and him the ſaid *William Fiſher* ſo thereout ejected, expelled, and amoved from his poſſeſſion aforeſaid, thereof kept out, and yet do keep out, and other outrages on him then and there committed againſt

againſt the peace of the ſaid now Lord the King, and to the damage of the ſaid *W. Fiſher* ten pounds, and therefore he produces the ſuit, *&c.*

As to the force, &c. guilty.

And the ſaid *James Wigg* by *R. G.* his attorney, and the ſaid *J. Nichols* by the ſaid *R. G.* his guardian, by the court of the ſaid now Lord the King ſpecially admitted, come and defend the force and injury when *&c.* and as to the force and arms or whatever that is againſt the peace of the now Lord the King, ſay, that they are not thereof guilty, and of this they put themſelves on the country, and the ſaid *W. Fiſher* thereof likewiſe *&c.* and as to the reſidue of the treſpaſs and ejectment aforeſaid, above ſuppoſed to be committed, the ſame *James* and *John* ſay, that the ſaid *W. Fiſher* ought not to have or maintain his action aforeſaid thereof againſt them, becauſe they ſay that the tenements aforeſaid, with the appurtenances, in which, *&c.* are, and at the time when, *&c.* as alſo from time out of mind were parcel of the manor of *B.* in the county of *Hertford* aforeſaid, and copyhold tenements of the ſame manor, and alſo demiſed and demiſable by copy of court roll of the ſaid manor, for the time being,

As to the reſidue that the premiſes are copyhold held of the manor of B. whereof Dame Capel and B. are ſeiſed in fee.

being, to any perſon or perſons whomſoever willing to take the ſame, in fee-ſimple or otherwiſe, at the will of the Lord according to the cuſtom of the manor aforeſaid, of which ſaid manor with the appurtenances whereof, &c. the right honourable Dame *Elizabeth Capel*, widow, and *R. B.* Gentleman, before the time when, &c. were ſeiſed in their demeſne as of fee, and being thereof ſo ſeiſed afterwards, and before the ſaid time when, &c. (to wit) at a court of them the ſaid Dame *Elizabeth Capel* and *R. B.* of the manor aforeſaid, held at the manor aforeſaid, on the 15th day of *October* 1660; the ſame Dame *Elizabeth Capel* and *R. B.* by copy of court-roll of the ſame manor, did grant the tenements, with the appurtenances in which, &c. to one *A. H.* the elder, his heirs and aſſigns for ever, at the wills of the Lords of the manor aforeſaid, according to the cuſtom of the ſaid manor, by virtue of which ſaid grant the ſaid *A. H.* the elder, into the ſame tenements entred, and was ſeiſed in his demeſne as of fee, at the will of the Lords of the manor aforeſaid, according to the cuſtom of the ſame manor, of and in the tenements aforeſaid, with the appurtenances in which, &c. and had iſſue *W. H.*

Grant by copy to **A. H.** in fee, who had iſſue 4 ſons and 2 daughters.

W. H. his eldeſt ſon and three other ſons (to wit) *A. R.* and *J.* and two daughters (to wit) *G.* and *A.* and that he the ſame *A. H.* the father being ſo thereof ſeized afterwards, and before the time when &c. at the ſame court then and there held, ſurrendered the ſame tenements into the hands of the Lord and Lady of the manor aforeſaid, to the uſe and behoof of *G.* his then wife, for and during the term of her natural life, and after her deceaſe, to the uſe of the ſaid *A. H.* the younger, *R. H.* and *J. H.* his three ſons, and *G. H.* and *A. H.* his two daughter, equally to be divided, and to their reſpective heirs and aſſigns for ever, and that afterwards (to wit) the ſame day, year, and place, at the ſame court, the ſaid Lord and Lady of the manor aforeſaid, by copy of court-roll of the ſame manor, granted the tenements aforeſaid to the ſaid *G.* the wife of the ſaid *A. H.* the elder, for and during the term of her natural life, the remainder thereof after her deceaſe to the ſaid *A. H.* the younger *R. H. J. H. G. H.* and *A. H.* the ſons and daughters of the ſaid *A. H.* the elder and *G.* his wife, equally to be divided and to their reſpective heirs and aſſigns for ever, at the will of the Lords of the manor aforeſaid, according to the cuſtom

And ſurrendered to his wife for life, and after to his three younger ſons and two daughters in fee equally to be divided.

cuſtom of the ſame manor, according to the form and effect of the ſurrender aforeſaid; and the ſaid *G.* the wife of the ſaid *A. H.* the elder, and the ſaid *A. H.* the younger, *R. H. J. H. G. H.* and *A. H.* were then and there admitted tenants thereof, in form aforeſaid; by virtue of which ſaid grant, the ſaid *G.* the wife of the ſaid *A. H.* the elder, was ſeized of the tenements aforeſaid, in which *&c.* in her demeſne for term of life, the remainder thereof to the ſame *A. H.* the younger, *R. H. J. H. G. H.* and *A. H.* equally to be divided, and to their reſpective heirs, belonging at the will of the Lord of the manor aforeſaid, according to the cuſtom of the ſaid manor; and the ſaid *G.* the wife of the ſaid *A. H.* the elder, ſo being thereof ſeiſed afterwards, and before the time when, *&c.* (to wit) on the firſt day of *May* 1661, at *B.* aforeſaid, in the county aforeſaid, ſhe the ſaid *G.* the wife of the ſaid *A. H.* the elder, and the ſaid *A. H.* the elder, *A. H.* the younger, *R. H. J. H.* and *G. H.* all died, and the ſaid *A.* did them ſurvive and keep herſelf in the tenements aforeſaid, in which *&c.* and was thereof ſole ſeiſed, by right of ſurvivorſhip, in her demeſne as of fee, at the will of the Lord of the manor aforeſaid, according

Who were admitted.

And all of them except A. died

Who being ſole ſeiſed by ſurvivorſhip took to huſband J. N. and had iſſue one of the defendants.

W. H. his eldeſt ſon and three other ſons (to wit) *A. R.* and *J.* and two daughters (to wit) *G.* and *A.* and that he the ſame *A. H.* the father being ſo thereof ſeized afterwards, and before the time when &c. at the ſame court then and there held, ſurrendered the ſame tenements into the hands of the Lord and Lady of the manor aforeſaid, to the uſe and behoof of *G.* his then wife, for and during the term of her natural life, and after her deceaſe, to the uſe of the ſaid *A. H.* the younger, *R. H.* and *J. H.* his three ſons, and *G. H.* and *A. H.* his two daughter, equally to be divided, and to their reſpective heirs and aſſigns for ever, and that afterwards (to wit) the ſame day, year, and place, at the ſame court, the ſaid Lord and Lady of the manor aforeſaid, by copy of court-roll of the ſame manor, granted the tenements aforeſaid to the ſaid *G.* the wife of the ſaid *A. H.* the elder, for and during the term of her natural life, the remainder thereof after her deceaſe to the ſaid *A. H.* the younger *R. H. J. H. G. H.* and *A. H.* the ſons and daughters of the ſaid *A. H.* the elder and *G.* his wife, equally to be divided and to their reſpective heirs and aſſigns for ever, at the will of the Lords of the manor aforeſaid, according to the cuſtom

And ſurrendered to his wife for life, and after to his three younger ſons and two daughters in fee equally to be divided.

cuſtom of the ſame manor, according to the form and effect of the ſurrender aforeſaid; and the ſaid *G.* the wife of the ſaid *A. H.* the elder, and the ſaid *A. H.* the younger, *R. H. J. H. G. H.* and *A. H.* were then and there admitted tenants thereof, in form aforeſaid; by virtue of which ſaid grant, the ſaid *G.* the wife of the ſaid *A. H.* the elder, was ſeized of the tenements aforeſaid, in which *&c.* in her demeſne for term of life, the remainder thereof to the ſame *A. H.* the younger, *R. H. J. H. G. H.* and *A. H.* equally to be divided, and to their reſpective heirs, belonging at the will of the Lord of the manor aforeſaid, according to the cuſtom of the ſaid manor; and the ſaid *G.* the wife of the ſaid *A. H.* the elder, ſo being thereof ſeiſed afterwards, and before the time when, *&c.* (to wit) on the firſt day of *May* 1661, at *B.* aforeſaid, in the county aforeſaid, ſhe the ſaid *G.* the wife of the ſaid *A. H.* the elder, and the ſaid *A. H.* the elder, *A. H.* the younger, *R. H. J. H.* and *G. H.* all died, and the ſaid *A.* did them ſurvive and keep herſelf in the tenements aforeſaid, in which *&c.* and was thereof ſole ſeiſed, by right of ſurvivorſhip, in her demeſne as of fee, at the will of the Lord of the manor aforeſaid, according

Who were admitted.

And all of them except A. died

Who being ſole ſeiſed by ſurvivorſhip took to huſband J. N. and had iſſue one of the defendants.

cording to the cuſtom of the ſaid manor, and being ſo thereof ſeiſed the ſaid *A. Higby* afterwards, and before the ſaid time when, *&c.* (to wit) on the 1ſt day of *May* 1680, at *B.* aforeſaid, took to huſband one *J. N.* which ſaid *J.* and *A.* had iſſue between them *J. Nicholls*, their firſt begotten ſon, now one of the defendants; and afterwards (to wit) on the 1ſt day of *May* 1690, at *B.* aforeſaid, the ſaid *J. N.* the elder died, and the ſaid *A. N.* then there likewiſe of ſuch her eſtate, died thereof ſeiſed, after whoſe death the tenements aforeſaid, with the appurtenances, deſcended to the ſame *J. N.* now one of the defendants, as ſon and heir of the ſaid *A.* whereby the ſaid *J. N.* into the tenements aforeſaid, with the appurtenances, entred and was thereof ſeized in his demeſne as of fee, at the will of the Lord of the manor, according to the cuſtom of the ſaid manor, and being ſo thereof ſeiſed the ſaid *J. H.* and *R. H.* the leſſors, *T. H. T. D.* and *D.* his wife, and alſo the ſaid *J. F.* and *E.* his wife, *A. S.* and *G. S.* on the ſame 1ſt day of *January*, in the 9th year aboveſaid, at *B.* aforeſaid, reſpectively made the ſaid indentures, of the ſaid three fifth parts, and the ſaid one fifth part of the tenements aforeſaid, with the

Who on the death of his father and mother entred and was ſeiſed on, whom the plaintiff entred, and he and the other defendant as his ſervant re-entered as &c.

appurtenances, in which, &c. to the ſaid *W. Fiſher*, as by the declaration aforeſaid is ſuppoſed, by colour of which ſaid indentures, the ſaid *W. F.* into the ſaid four parts of the tenements aforeſaid, with the appurtenances in which, &c. before the ſaid time when, &c. entred and was thereof poſſeſſed, on the poſſeſſion of which ſaid *W. Fiſher* thereof, the ſame *James* and *John Nicholls* afterwards (to wit) the ſaid time when, &c. into the ſaid four parts of the tenements aforeſaid, with the appurtenances (to wit) the ſaid *J. Nichols* claiming his eſtate aforeſaid, and the ſaid *James* as his ſervant, and by his command thereto entred, and the ſaid *W. Fiſher* from his farms aforeſaid thereof ejected, as they lawfully might, and this they are ready to verify, wherefore they pray judgment if the ſaid *W. F.* ought to have or maintain his action aforeſaid thereof againſt them, &c.

Repl. as to three fifth parts. Admits they are copyhold.

And the ſaid *W. Fiſher* as to the ſaid three fifth parts of the tenements aforeſaid, with the appurtenances, in the firſt demiſe aforeſaid abovementioned, ſays that he by any thing, by the ſaid *James* and *John* above in pleading alledged, ought not to be precluded from his action thereof

againſt them had, becauſe he ſays that right and true it is, that the tenements aforeſaid, with the appurtenances, are, and for all the time aboveſaid were, parcel of the manor aforeſaid, and demiſed and demiſable as by the plea aforeſaid is above ſuppoſed. But the ſaid *W. Fiſher* further ſays, that the ſaid *A. H.* and the ſaid *G.* had iſſue between them lawfully begotten, one *W. H.* their eldeſt ſon and heir, and alſo the ſaid *A. H.* the younger, *R. H.* and *J. H.* his three ſons, and alſo *G. H.* and *A. H.* his daughters, and ſurrendered the tenements aforeſaid, with the appurtenances, into the hands of the Lord and Lady of the manor aforeſaid, to the uſe and behoof of the ſaid *G.* his wife for the term of her natural life, and, after her deceaſe, to the uſe of the ſaid *A. H.* the younger, *R. H. J. H. G. H.* and *A. H.* his ſons and daughters, equally to be divided and to their reſpective heirs and aſſigns for ever. And afterwards the ſaid *A. H.* the father there died, and thereupon the ſame Dame *Capel* and *R. B.* granted the ſaid tenements, with the appurtenances, to the ſaid *G.* the wife of the ſaid *A. H.* the elder, for and during the term of her natural life, and, after her deceaſe, to the ſaid *A. H. R. H. J. H. G. H.*

And ſurrender and uſes.

G. H. and *A. H.* ſons and daughters of the ſaid *A. H.* the elder and *G.* his wife, equally to be divided, and to their reſpective heirs and aſſigns for ever, to hold at the will of the Lords of the manor aforeſaid, according to the cuſtom of the ſaid manor, as in the plea aforeſaid is alledged; and that the ſaid *G.* the wife, by virtue of the ſurrender and grant aforeſaid, was ſeiſed of the tenements aforeſaid, with the appurtenances, in her demeſne for the term of her life, the remainder thereof to the ſame ſons and daughters, at the will of the ſaid Lords, according to the cuſtom of the manor aforeſaid, in form aforeſaid belonging; and that the ſaid *G.* the wife of the ſaid *A. H.* the elder, and the ſaid *A. H.* the younger, *R. H. J. H.* and *G. H.* the daughter died, and the ſaid *A.* them ſurvived, and afterwards took to her huſband the ſaid *J. Nicholls*, and they had iſſue between them the ſaid *J. N.* now one of the defendants, and afterwards the ſaid *J. N.* the elder and *A.* died, as by the plea aforeſaid is above ſuppoſed: But the ſame *W. Fiſher* ſays, that the ſaid *G.* the wife of the ſaid *A. H.* the elder died in the life-time of the ſaid *A. H.* the younger, *R. H. J. H.* and *G. H.* the ſons and daughter of the ſaid *A. H.* the elder

and *G.* his wife, whereby the ſame *A. R.* and *J.* the ſons, and the ſaid *G.* and *A.* the daughters into the tenements aforeſaid, with the appurtenances, entred and were thereof ſeiſed in common in their demeſne as of fee, at the will of the Lord, according to the cuſtom of the manor aforeſaid, and being ſo thereof ſeized the ſaid *A.* the ſon, of ſuch his eſtate, of and in the tenements aforeſaid, at *B.* aforeſaid, died thereof ſeiſed, without heir iſſuing from his body, after whoſe death his purparty (to wit) the fifth part of the tenements aforeſaid, with the appurtenances, deſcended to the ſaid *W. H.* as elder brother and heir of the ſaid *A.* the ſon, and the ſaid *R.* the ſon died ſeiſed, without heir from his body iſſuing, after whoſe death his purparty (to wit) another fifth part of the tenements aforeſaid, with the appurtenances, deſcended to the ſaid *W. H.* as elder brother and heir of the ſame *R.* the ſon, and the ſaid *J.* the ſon of ſuch his eſtate, of and in the tenements aforeſaid, with the appurtenances, there likewiſe died ſeiſed, without heir from his body iſſuing, after whoſe death his purparty (to wit) another fifth part of the tenements aforeſaid, with the appurtenances, deſcended to the ſaid *W. H.* as elder brother

Three died and their parts deſcended to W. H. as elder brother and heir.

ther and heir of the ſaid *J.* and by reaſon of the premiſſes the ſame *W. H.* was ſeiſed of three parts of the tenements aforeſaid, with the appurtenances, in five parts to be divided, in his demeſne, as of fee, at the will of the lord, according to the cuſtom of the manor aforeſaid. And the ſame *W. F.* farther ſays, that within the manor aforeſaid there is and from time immemorial hath been a certain ancient and laudable cuſtom uſed and approved, to wit, that every cuſtomary tenant of the ſaid manor being ſeiſed of any cuſtomary lands or tenements of the ſame manor in his demeſne as of fee at the will of the lord, according to the cuſtom of the ſame manor, and within the manor aforeſaid, did ſurrender, and was uſed and accuſtomed to ſurrender at his pleaſure all ſuch his cuſtomary lands and tenements, or any part thereof, out of the court of the manor aforeſaid into the hands of the lord or lords of the manor aforeſaid for the time being, by the hands of two cuſtomary tenants, to any uſe or uſes whatſoever, as to him ſhould ſeem fit, and if any ſuch ſurrender out of the court of the manor aforeſaid into the hands of the lord or lords of the manor aforeſaid for the time being, by the hands

Cuſtom to ſurrender out of court.

of two cuſtomary tenants, was in form aforeſaid had and made, that then ſuch ſurrender, during all the time aboveſaid was preſented, and was uſed to be preſented at the court of the ſame manor next following ſuch ſurrender at the ſaid manor to be held. And that the ſaid *W. H.* laſt named, of the ſaid three parts of the tenements aforeſaid, with the appurtenances, in five parts to be divided, in form aforeſaid being ſeiſed, the ſame *W. H.* afterwards and before the ſaid time when, *&c.* to wit, on the firſt day of *Auguſt*, in the ninth year of the reign of the ſaid now Lord the King aboveſaid, at the pariſh of *B.* aforeſaid, in the county aforeſaid, and within the manor aforeſaid, ſurrendered the ſame three fifth parts of the tenements aforeſaid, with the appurtenances, into the hands of the lord of the manor aforeſaid, by the hands of *N. C.* and *J. J.* then two cuſtomary tenants of the manor aforeſaid, according to the cuſtom of the ſaid manor, to ſuch uſes, intents and purpoſes as he the ſame *W. H.* by his laſt will and teſtament ſhould limit and appoint, and afterwards, to wit, the ſame day and year, made his laſt will and teſtament in writing, and by his ſaid laſt will gave and deviſed his ſame three

W. H ſurrendered to the uſe of his will, and thereby deviſed theſe three parts to the plaintiff's leſſor.

three fifth parts of the tenements aforeſaid, with the appurtenances, to the ſaid *J. H. R. H. T. H.* and *D.* in the declaration aforeſaid above named, being the ſons and daughter of the ſaid *W. Higby* the father, and their heirs for ever, and afterwards, to wit, on the tenth day of *December*, in the ninth year aboveſaid, the ſaid *W. Higby*, the father, at the pariſh aforeſaid, in the county aforeſaid, died ſeiſed of ſuch his eſtate of and in the ſaid three parts of the tenements aforeſaid, with the appurtenances, and afterwards, to wit, at the next court of the manor aforeſaid held after the ſaid ſurrender, to wit, at the court of the ſaid manor held within the manor aforeſaid on the eighteenth day of *December*, in the ninth year aboveſaid, the ſaid ſurrender, according to the cuſtom of the manor aforeſaid, and the ſaid death of him the ſaid *W. H.* the father, by the homage of the ſaid court, was preſented, and thereupon *R. P.* and *N. P.* then lords of the manor aforeſaid, by their then ſteward of the court of that manor, by copy of court-roll of the ſaid manor, in execution of the will aforeſaid, granted the ſame three fifth parts of the tenements aforeſaid, with the appurtenances, to the ſaid *J. H. R. H. T. H.* and

The preſentement of the ſurrender, and of the death of W. H.

The admiſſion of the deviſees to the three fifths.

and *D.* the ſons and daughter of the ſaid *W. H.* the father, to have and to hold to them and their heirs, at the will of the lord, according to the cuſtom of the manor aforeſaid, and afterwards, to wit, the ſame day, year, and place, laſt aboveſaid, *T. D.* took to wife the ſaid *D. H.* and by reaſon of the premiſſes the ſame *J. H. R. H.* and *T. H.* the ſons, in their own proper right, and the ſaid *T. D.* and *D.* in the right of the ſaid *D.* into the ſaid three fifth parts of the tenements aforeſaid, with the appurtenances, entered, and were, to wit, the ſame *J. H. R. H.* and *T. H.* the ſons, in their own proper right, and the ſaid *T. D.* and *D.* in the right of the ſaid *D.* thereof ſeiſed in their demeſne, as of fee, at the will of the lord of the manor aforeſaid, according to the cuſtom of the ſaid manor, and being ſo thereof ſeiſed, the ſame *J. H. R. H.* and *T. H.* the ſons, and the ſaid *T. D.* and *D.* on the firſt day of *January*, in the ninth year aboveſaid, at *B.* aforeſaid, into the tenements aforeſaid, with the appurtenances, entered, and by the indenture aforeſaid in the declaration aforeſaid above firſt mentioned, demiſed the ſame three fifth parts of the tenements aforeſaid, with the appurtenances, to the ſame *W. F.*

Who demiſed them to the plaintiff.

to

to have and to hold to the ſame *W. F.* and his aſſigns, from the ſaid feaſt of the birth of our Lord then paſt unto the full end and term aforeſaid of ſeven years from thence next enſuing, and fully to be complete and ended: by virtue of which ſaid demiſe the ſame *W. F.* into the ſame three fifth parts of the tenements aforeſaid, with the appurtenances, entered, and was thereof poſſeſſed, until the ſaid *James* and *J. Nicholls* afterwards, to wit, the ſame firſt day of *January*, in the ninth year aboveſaid, into the ſame three fifth parts of the tenements aforeſaid, with the appurtenances, in and upon the poſſeſſion of him the ſaid *W. F.* entered, and him the ſaid *W. F.* from his farm aforeſaid, his term aforeſaid therein not ended, ejected, expelled, and amoved, in manner and form as the ſame *W. F.* above thereof againſt the ſaid *James* and *J. N.* complains, and this he is ready to verify, wherefore he prays judgment, and his damages by reaſon of the ſaid treſpaſs and ejectment to be adjudged to him, *&c.* And as to the ſaid fifth part of the tenements aforeſaid, with the appurtenances, in the declaration aforeſaid above-mentioned to be demiſed to the ſame *W. F.* by the ſaid *J. T.* and *E.* his wife, and *A. S.*

The like plea to the other fifth part.

A. S. and *G. S.* ſpinſters, the ſame *W. F.* ſays that he, by any thing by the ſaid *James* and *John* above in pleading alledged, ought not to be precluded from his action aforeſaid thereof againſt them had, becauſe as before he ſays, that right and true it is that the tenements aforeſaid, with the appurtenances, are and for all the time aforeſaid were parcel of the manor aforeſaid, and demiſed and demiſable as by the plea aforeſaid is above alledged. But the ſaid *W. F.* farther ſays, that the ſaid *A. H.* the elder, and the ſaid *G.* had iſſue between them lawfully begotten one *W. H.* their eldeſt ſon and heir, and alſo the ſaid *A.* the younger, *R.* and *J. H.* three ſons, and alſo the ſaid *G. H.* and *A. H.* his daughters, and ſurrendered the tenements aforeſaid, with the appurtenances, into the hands of the ſaid lord and lady of the manor aforeſaid, to the uſe and behoof of the ſaid *G.* his wife for the term of her natural life, and after her deceaſe to the uſe and behoof of the ſaid *A. H.* the younger, *R. H. J. H. G. H.* and *A. H.* his ſons and daughters, equally to be divided, and to their reſpective heirs and aſſigns for ever, and afterwards the ſaid *A.* the father, died, and thereupon the ſaid dame *C.* and *R. B.* lords of

of the manor aforeſaid, granted the tenements aforeſaid, with the appurtenances, to the ſaid *G.* the wife of the ſaid *A. H.* the elder, for and during the term of her natural life, and after her deceaſe to the ſaid *A. H. R. H. J. H. G. H.* and *A. H.* the ſons and daughters of the ſaid *A. H.* the elder, and *G.* his wife, equally to be divided, and to their reſpective heirs and aſſigns for ever. And that the ſaid *G.* the wife, by virtue of the ſurrender and grant aforeſaid, was ſeiſed of the tenements aforeſaid, with the appurtenances, in her demeſne, for the term of her life, the remainder thereof to the ſame ſons and daughters, at the will of the lords of the manor aforeſaid, according to the cuſtom of the ſaid manor belonging, and that the ſaid *G.* the wife of the ſaid *A. H.* the elder, *A. H.* the younger, *R. H. J. H.* and *G. H.* the daughter, died, and the ſaid *A.* ſurvived them, and afterwards took to her huſband the ſaid *J. N.* and they had iſſue between them the ſaid *John Nicholls*, now one of the defendants, and afterwards the ſaid *A.* died, as by the plea aforeſaid above is ſuppoſed, but the ſame *W. F.* as before, farther ſays, that *G.* the wife of the ſaid *A. H.* the elder, died in the life-time of the ſaid *A. H.* the younger,

younger, *R. H. J. H. G. H.* and *A. H.* the ſons and daughters of the ſaid *A. H.* the elder, and *G.* his wife, whereby the ſame *A. R.* and *J.* the ſons, and the ſaid *G.* and *A.* the daughters, into the tenements aforeſaid, with the appurtenances, entered, and were thereof ſeiſed in common, to wit, the ſame *G.* the daughter, of a fifth part of the tenements aforeſaid, with the appurtenances, in her demeſne, as of fee, at the will of the lord, according to the cuſtom of the manor aforeſaid, and being ſo thereof ſeiſed, the ſame *G.* the daughter, afterwards and before the ſaid time when, *&c.* at the pariſh aforeſaid, took to her huſband one *J. S.* and the ſame *J. S.* and *G.* his wife, afterwards and before the ſaid time when, *&c.* there had iſſue between them lawfully begotten the ſaid *E.* now the wife of the ſaid *J. F.* and the ſaid *A.* and *G. S.* and afterwards and before the ſaid time when, *&c.* the ſaid *J. S.* and afterwards the ſaid *G.* his wife, died, of ſuch their eſtate of and in the ſame fifth part of the tenements aforeſaid, with the appurtenances, ſeiſed, after the death of which ſaid *G. S.* the ſame fifth part of the tenements aforeſaid, with the appurtenances, deſcended to

to the ſaid *E.* now the wife of the ſaid *J. F.* and to the ſaid *A.* and *G. S.* as daughters and coheirs of the ſaid *G. S.* late the wife of the ſaid *J. S.* whereby the ſame *J. F.* and *E.* his wife, *A.* and *G. S.* into the ſame fifth part of the tenements aforeſaid, with the appurtenances, entered, and were, to wit, the ſame *J. F.* and *E.* his wife, ſeiſed in the right of the ſame *E.* and the ſaid *A* and *G. S.* ſeiſed in their own proper rights in their demeſne, as of fee, at the will of the lord, according to the cuſtom of the manor aforeſaid, and being ſo thereof ſeiſed, the ſame *J. F.* and *E.* his wife, *A.* and *G. S.* on the ſaid firſt day of *January*, in the ninth year aboveſaid, at *B.* aforeſaid, by indenture aforeſaid, in the declaration aforeſaid above ſecond mentioned, demiſed the ſame fifth part of the tenements aforeſaid, with the appurtenances, to the ſame *William Fiſher*, to have and to hold to the ſaid *William Fiſher*, and his aſſigns, from the ſaid feaſt of the birth of our Lord then laſt paſt unto the full end and term aforeſaid of ſeven years from thence next enſuing, and fully to be complete and ended, by virtue of which ſaid demiſe the ſame *William Fiſher* into the ſame fifth part of the tenements aforeſaid, with

with the appurtenances, entered, and was thereof poſſeſſed until the ſaid *James* and *John Nicholls* afterwards, to wit, on the ſame firſt day of *January*, in the ninth year aboveſaid, into the ſame fifth part of the tenements aforeſaid, with the appurtenances, in and upon the poſſeſſion of him the ſaid *William Fiſher*, entered, and him the ſaid *William Fiſher* from his farm aforeſaid thereof, his term aforeſaid therein not yet expired, ejected, expelled and amoved, in manner and form as the ſame *William Fiſher* above thereof againſt the ſaid *James* and *John Nicholls* complains; and this he is ready to verify, wherefore he prays judgment, and his damages by reaſon of the ſaid treſpaſs and ejectment, to be adjudged to him, *&c.* Judgment was given for the plaintiff on demurrer.

Humphry v. Bathurſt. Hil. 35 & 36 Car. 2. Roll. 694. 1 Lut. 741. Not guilty.

AND the ſaid *Edward*, by *Edmund Hodfall*, his attorney, comes and defends the force and injury, when, *&c.* and pleads that he is no wiſe guilty of the treſpaſs and ejectment aforeſaid, as the ſaid *John* above complains againſt him, and thereof he puts himſelf upon the country, and the ſaid *John* does likewiſe

wiſe the ſame; therefore the ſheriff is commanded that he cauſe to come hither on the octave of the purification of the Bleſſed Virgin *Mary*, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* At which day the jury between the ſaid parties in the ſaid action were reſpited here until this day (namely) in fifteen days from the feaſt of *Eaſter* then next following, unleſs his preſent Majeſty's juſtices aſſigned to hold the aſſizes in the county aforeſaid, by virtue of the ſtatute, *&c.* ſhould come before on *Tueſday*, the eighteenth day of *March* next enſuing, at *Rocheſter*, in the county aforeſaid. And now here at this day the ſaid *John* came, by his ſaid attorney, and the ſaid juſtices of aſſizes, before whom, *&c.* returned hither their record, in theſe words, afterwards, at the day and place within contained, as well the within named *John Humfry* as the within written *Edward Bathurſt*, by their attornies within mentioned, came before Sir *Thomas Jones*, Knight, his Majeſty's chief juſtice of the court of *Common Pleas*, and Sir *Job Charlton*, Knight, one of his ſaid Majeſty's juſtices of the *Common Pleas*, aſſigned by virtue of the ſtatute, *&c.* to hold the aſſizes in the

The award of the venire.

The award of Niſi prius.

The poſtea.

county of *Kent*, and the jurors of the jury, whereof mention is within made, being ſummoned, ſome of them, namely, *E. S. R. V. J. S. T. S. R. G. C. L. W. B. R. T.* and *J. T.* appear, and are ſworn upon the jury, and becauſe the reſt of the jurors of the jury have not appeared, therefore others of the by-ſtanders, choſen by the ſheriff of the county aforeſaid for this purpoſe, are at the requeſt of the ſaid *John Humfry*, and by the command of the ſaid juſtices, put on anew, whoſe names are affiled in the within written panel, according to the direction of the ſtatute in ſuch caſe made and provided, and the jurors ſo put anew, namely, *J. B. T. M.* and *M. B.* being called, likewiſe appear, who being choſen, tried and ſworn, together with the jurors before impanelled and ſworn, do declare the truth of the within contents, as to the within written treſpaſs and ejectment, in two parts of the manor of *Pullens*, with the appurtenances within mentioned (the whole in three parts to be divided); and alſo in two parts of all and ſingular the tenements within written, with the appurtenances (the whole in three parts likewiſe divided) declare upon their oath that the ſaid *A. B.* is in no wiſe guilty there-

Tales awarded.

As to two parts of the manor, and as to two third parts of the premiſſes, Not guilty.

thereof, as the ſaid *E. B.* hath within alledged in his plea; and as to the within written treſpaſs and ejectment in the third part of the manor aforeſaid, with the appurtenances, reſidue of the ſaid manor, and alſo in the third part of all and ſingular the tenements aforeſaid, with the appurtenances, reſidue of the ſaid tenements, with the appurtenances (the whole in three parts to be divided) as aforeſaid. The ſaid jurors do further declare, upon their ſaid oath, that long before the within written time, when the treſpaſs and ejectment within mentioned is within ſuppoſed to have been committed, namely, on the firſt day of *December*, in the thirty-eighth year of the reign of our late Sovereign Lady *Elizabeth*, late Queen of *England*, one *Paul Bathurſt* was ſeiſed in fee of and in the manor aforeſaid, with the appurtenances, and alſo of and in all and ſingular the tenements aforeſaid, with the appurtenances ſpecified in the within written declaration in his demeſne, as of fee. And the jurors further declare upon their ſaid oath, that the ſaid *Paul Bathurſt* had iſſue of his body, lawfully begotten, *Edward Bathurſt*, his ſon and heir apparent, and that the ſaid *Paul Bathurſt*, afterwards, and before

As to the other third part the ſpecial verdict.

That the firſt of December, in the 38th of Eliz. P. Bathurſt was ſeiſed in fee.

And that he had iſſue Edward his ſon and heir apparent.

That P. on the 7th of December, 40. Eliz. executed an indenture between him of the one part, and the ſaid Edward and others of the other part.

the ſaid time when, &c. namely on the 7th day of *December*, in the fortieth year of the reign of our ſaid late Sovereign Lady *Elizabeth*, late Queen of *England*, &c. made, and as his deed delivered, a certain indenture ſealed with his ſeal, executed between the ſaid *Paul Bathurſt* by the name of *Paul Bathurſt* (as in the deed) of the one part and the ſaid *Edmund Bathurſt* his ſon, one *John Horſmonden*, *George Day*, and *Robert Auſten*, by the names of *John Horſmonden* &c. (as in the deed) of the other part, bearing date on the ſaid ſeventh day of *December*, in the ſaid fortieth year of the reign of our ſaid late Sovereign Lady *Elizabeth*, late queen of *England*, &c. the tenor of which indenture followeth in theſe words: *This Indenture* made the ſeventh day of *December*, in the fortieth year of the reign of our Sovereign Lady *Elizabeth*, by the grace of God, Queen of *England*, *France*, and *Ireland*, defender of the faith, &c. between *Paul Bathurſt* of *Goodhurſt*, in the county of *Kent*, gentleman, of the one part, and *Edward Bathurſt* gentleman, ſon and heir apparent of the ſaid *Paul*, *John Horſmonden* of *Gowdhurſt* aforeſaid, clothier, *George Day* of *Boughton Mounchelſey*, in the ſaid county, taylor, and *Robert Auſten*

The indenture by which the ſaid P. for the preferment of his ſon Edward granted &c. to Edward, &c. the premiſes in the declaration.

of

of *Gowdhurſt* aforeſaid, clothier, of the other party, witneſſeth that the ſaid *Paul Bathurſt*, for the advancement and preferment of the ſaid *Edward Bathurſt*, and of the heirs males of his body lawfully begotten, and of the other of the children of the ſaid *Paul* the father, hereafter in theſe preſents ſpecially named, and of the heirs males of his body lawfully begotten, for divers good cauſes and conſiderations him thereunto moving, hath granted and enfeoffed, aliened and confirmed, and by theſe preſents doth grant, enfeoff, alien, and confirm unto the ſaid *Edward Bathurſt*, *John Horſmonden*, *George Day*, and *Robert Auſten*, all that the manor of *Pullens*, ſituate, lying, or being within the pariſhes of *Horſmonden* and *Lamberhurſt*, in the ſaid county of *Kent*, with all and ſingular the appurtenances, and all other the lands, tenements, and hereditaments of the ſaid *Paul Bathurſt*, lying or being within the ſaid pariſhes of *Horſmonden* and *Lamberhurſt*, or either of them, to have and to hold the ſaid manor, lands, tenements, and hereditaments, and other premiſes with the appurtenances, unto the ſaid *Edward Bathurſt*, *John Horſmonden*, *George Day*, and *Robert Auſten*, their heirs

Habendum to them and their heirs.

To the uſe of himſelf for life, the remainder to ſuch perſons as he ſhould appoint by his laſt will, &c. for th e term of ſeven years and for want of ſuch appointment immediately after his deceaſe, to the uſe of his executors, &c. for 7 years, for the payment of his debts and legacies, and to perform his will.

and aſſigns, to the only uſes and intents hereafter in theſe preſents expreſſed, and not to any other uſe, intent, or purpoſe (that is to ſay) to the uſe of the ſaid *Paul Bathurſt* and his aſſigns, for and during the term of his natural life, without impeachment of and for any manner of waſte; and after the deceaſe of the ſaid *Paul*, then to the uſe of ſuch perſon or perſons as the ſaid *Paul* ſhall by his laſt will and teſtament in writing, or by any other writing ſubſcribed with his own hand, limit or appoint the ſame, if any ſuch limitation or appointment he ſhall make, for and during the term of ſeven years next after the deceaſe of the ſaid *Paul*, and if it ſhall happen that the ſaid *Paul Bathurſt* ſhall not by his laſt will and teſtament in writing, or by any other writing ſubſcribed with his own hand, appoint or limit the ſaid manor, lands, tenements, and hereditaments, to any perſon or perſons, that then immediately from and after the deceaſe of the ſaid *Paul Bathurſt*, the ſaid manor, lands, tenements, and hereditaments ſhall be, and the ſaid *Edward Bathurſt*, *John Horſmonden*, *George Day*, and *Robert Auſten* and their heirs ſhall ſtand and be thereof ſeiſed, to the uſe of the executors or adminiſtra-

miniſtrators of the ſaid *Paul*, during the ſaid term of ſeven years next after the deceaſe of the ſaid *Paul*, for and towards the payment of his debts and legacies, and for the performance and execution of his ſaid will; and after the deceaſe of the ſaid *Paul*, and the ſaid term of ſeven years next after his deceaſe expired and ended, then to the uſe of the ſaid *Edward Bathurſt* for and during the term of his natural life, without impeachment of waſte; and after the deceaſe of the ſaid *Edward Bathurſt* the ſon, then to the uſe of the firſt ſon of the body of the ſaid *Edward* lawfully begotten, and to the heirs male of his body lawfully begotten, and for default of ſuch iſſue, then to the uſe of the ſecond ſon lawfully begotten of the body of the ſaid *Edward*, and to the heirs males of his body lawfully to be begotten, and for default of ſuch iſſue, then to the uſe of the third ſon of the ſaid *Edward* lawfully begotten, and the heirs males of his body lawfully to be begotten, and for default of ſuch iſſue, then to the uſe of the fourth ſon of the ſaid *Edward* lawfully begotten, and to the heirs males of his body lawfully to be begotten, and for default of ſuch iſſue, then to the uſe of the fifth ſon of the body of the ſaid *Edward*

The remainder to the uſe of Edward his ſon for life.

Remainder to his firſt ſon in tail male.

Remainder to the 2d, 3d, 4th, and 5th ſons.

lawfully begotten, and for default of ſuch iſſue, then to the uſe of the right heirs of the ſaid *Paul Bathurſt* for ever, as it doth and may by the indenture aforeſaid now ſhewn to the ſaid juſtices, and proved, read, and given in evidence to the ſaid jury (amongſt other things) more fully appear. And the ſaid jurors further declare upon their oath, that the ſaid *Paul Bathurſt* afterwards, and before the ſaid time when, &c. (namely) on the 8th day of *December*, in the forty-ſecond year of the reign of the ſaid late Sovereign Lady Queen *Elizabeth*, died at *Gowdhurſt* aforeſaid, in the ſaid county of *Kent*, and that the ſaid *Edward Bathurſt*, ſon and heir of *Paul Bathurſt*, afterwards, and before the ſaid time when, &c. (namely) on the 8th day of *December*, in the forty-ſecond year of the reign of the ſaid late Sovereign Lady Queen *Elizabeth*, died at *Gowdhurſt* aforeſaid, in the ſaid county of *Kent*, and that the ſaid *Edward Bathurſt*, ſon and heir of *Paul Bathurſt*, afterwards, and before the ſaid time when, &c. (namely) on the 10th day of the aforeſaid month of *December*, in the forty-ſecond year aforeſaid, entred into the ſaid manor and tenements aforeſaid, with the appurtenances, and was ſeiſed thereof as the law requires; and that the ſaid

Remainder to the right heirs of Paul.

That Paul Bathurſt died the 6th of December 42 Eliz.

That Edward his ſon and heir entred and was ſeiſed.

ſaid *Edward Bathurſt*, ſon and heir of *Paul Bathurſt*, had iſſue of his body, lawfully begotten, four ſons (namely) *Thomas* his eldeſt ſon, *Edward* his ſecond ſon, father to the ſaid *Edward*, *William* his third ſon, and *Richard* his fourth ſon, and that the ſaid *Edward* the father being ſo ſeiſed, afterwards, and before the ſaid time when *&c.* (namely) on the 1ſt day of *May*, in the year of our Lord 1630, died at *Gowdhurſt* aforeſaid, in the ſaid county of *Kent*, and that *Thomas Bathurſt*, the eldeſt ſon of the ſaid *Edward*, ſurvived him, and that he afterwards, and before the ſaid time when, *&c.* (namely) on the 2d day of *May*, in the year of our Lord 1663, entered into the ſaid manor and tenements, with the appurtenances, and was ſeiſed thereof as the law requires. And the ſaid jurors do further declare upon their ſaid oath that afterwards, and before the ſaid time when, *&c.* (to wit) in *Michaelmas* term, in the ſeventh year of the reign of his late Majeſty King *Charles* the firſt, before Sir *Robert Heath*, Knight, and his brethren, then juſtices of the court of common pleas, of his ſaid late Majeſty King *Charles* the firſt, at *Weſtminſter*, one *George Mapleſden* gentleman, and *James Sarys* gentleman, perſonally demanded againſt the ſaid

That he had iſſue Thomas his eldeſt ſon, and Edward, William, and Robert.

That Edward the father died ſeiſed 1ſt May, 1630.

That Thomas his eldeſt ſon entred and was ſeiſed.

That Mich. term 7 Car. the ſaid Thomas ſuffered a recovery.

ſaid *Thomas Bathurſt*, by the name of *Thomas Bathurſt*, gentleman, the manor of *Pullens*, with the appurtenances, and one meſſuage, one dove-houſe, one garden, fifty acres of land, ten acres of meadow, fifty acres of paſture, one hundred acres of wood, a rent of ſeven ſhillings, and a rent of fifteen diſhes, with the appurtenances, in *Horſmonden* and *Lamberhurſt*, as his right and inheritance, and into which the ſaid *Thomas* had not any entry, but after a diſeiſin with *Hugh Hunt* unjuſtly, and without judgment made thereon, to the ſaid *George* and *James* within thirty years, *&c.* and whereupon they declared that they were ſeized of the manor, tenements, and rents aforeſaid, with the appurtenances, in their demeſne, of a fee and right in time of peace, in the time of our late Sovereign Lord the King, that then was, by taking by the profits thereof, *&c.* and in which, *&c.* and thereof they brought their ſuit, *&c.* and the ſaid *Thomas* perſonally came and defended his right when, *&c.* and thereupon vouched to warranty *Edward Howſe*, who being then perſonally preſent in court, *gratis* warranted to him the manor, tenements, and rents aforeſaid, with the appurtenan-

ces,

The recovery.

Wherein Edward Howſe was vouched.

ces, and thereupon the ſaid *George* and *James* demanded againſt the ſaid *Edward*, tenant by his warranty, the manor, tenements, and rents aforeſaid, with the appurtenances; and whereupon they declared that they were ſeiſed of the manor, tenements, and rents aforeſaid, with the appurtenances in their demeſne, as of a fee and right in time of peace, in the time of our late Sovereign Lord the King, that then was, by taking the profits thereof, *&c.* and in which, *&c.* and thereupon they brought their ſuit, *&c.* and the ſaid *Edward*, tenant by his warranty, defended his right when, *&c.* and pleaded that the ſaid *Hugh* had not diſſeiſed the ſaid *George* and *James*, of the manor, tenements, and rents aforeſaid, with the appurtenances, as they the ſaid *George* and *James* had by their ſaid writ and declaration ſuppoſed, and thereof they put themſelves on the country, and the ſaid *George* and *James* did likewiſe the ſame. And the ſaid *George* and *James* prayed leave thereto to imparl, and it was granted to them, *&c.* and afterwards, that ſame term, they the ſaid *George* and *James* perſonally came again there into court at *Weſtminſter*, and the ſaid *Edward*, although ſolemnly called, came not again, but departed in contempt of

The plea of the vouchee.

Imparlance

of the court, and made default, therefore it was adjudged that the ſaid *George* and *James* recover their ſeiſin againſt the ſaid *Thomas*, of the manor, tenements, and rents aforeſaid, with the appurtenances, and that the ſaid *Thomas* have the lands of the ſaid *Edward*, to the value &c. and that the ſaid *Edward* be amerced, and thereupon the ſaid *George* and *James* prayed his Majeſty's writ to be directed to the ſheriff of the county aforeſaid, to cauſe them to have full ſeiſin of the manor, tenements, and rents aforeſaid, with the appurtenances, and it was granted to them, returnable forthwith into the court aforeſaid, and afterwards (namely on the fifteenth day of *November* that ſame term) the ſaid *George* and *James* perſonally came there into the ſaid court at *Weſtminſter*, and the ſheriff (namely) Sir *Robert Lewkener* Knight, then made a return, that he by virtue of the writ aforeſaid, to him directed on the 10th day of *November*, then laſt paſt, cauſed the ſaid *George* and *James* to have full ſeiſin of the manor, tenements, and rents aforeſaid, with the appurtenances, as he had been directed by the writ aforeſaid, and the ſaid jurors do further declare upon their ſaid oath,

The judgment.

The writ of ſeiſin.

The return.

oath, that the ſaid *Thomas Bathurſt*, afterwards and before the ſaid time when, &c. namely, on the twenty-fifth day of *February*, in the eighth year of the reign of his ſaid late Majeſty King *Charles* the Firſt, made, and as his deed delivered, an indenture, ſealed with his ſeal, executed between the ſaid *Thomas Bathurſt*, by the name of *Thomas Bathurſt*, of the one part, and Sir *Walter Roberts*, Knight, and *Henry Criſp*, Eſq; by the names of, &c. of the other part, bearing date on the twenty-fifth day of *February*, in the eighth year of the reign of his ſaid late Majeſty King *Charles* the Firſt, the tenor of which ſaid indenture follows in theſe words: *This indenture*, made on the twenty-fifth day of *February*, in the eighth year of the reign of our Sovereign Lord *Charles*, by the grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. between *Thomas Bathurſt*, of *Gowdhurſt*, in the county of *Kent*, Eſq; of the one part, and Sir *Walter Roberts*, of *Glaſſenbury*, in the pariſh of *Cranebrook*, in the ſaid county, Knight and Baronet, and *Henry Criſp*, of *Birchington*, in the iſle of *Thanet*, in the ſaid county, Eſq; of the other party, *witneſſeth*, that whereas the ſaid *Thomas Bathurſt* now is and ſtandeth ſeiſed in

That Thomas Bathurſt the 25th of February, 8 Car. 1. executed an indenture between him of the one part, and Walter Roberts and Henry Criſp, of the other part.

The indenture, in which it is recited that the ſaid J. B. was ſeiſed in fee.

in his demeſne as of a fee, of and in the manor of *Pullen's*, with the rents and ſervices thereunto belonging *(viz.)* of and in all that meſſuage or tenement, dove-houſes, barns, with all the buildings thereunto belonging, cloſes, gardens, orchards, *forſtalls*, called or known by the name of *Pullen's*, together with all thoſe pieces or parcels of lands, meadow, arable, paſture grounds, and wood-lands thereunto belonging or appertaining, or as part, parcel or member thereof, now or heretofore accepted, reputed, taken or known, with all and ſingular their appurtenances, now or late in the tenure or occupation of one *Richard Eſtland*, or his aſſigns, and alſo of and in all that little houſe or cottage now or late in the tenure or occupation of one *William Allen*, and of and in all thoſe pieces or parcels of land, meadow and paſture, lately purchaſed of *Thomas Hickmott*, of *Horſmonden*, in the ſaid county, together with one other little houſe or cottage, parcel of the laſt recited premiſes, now or late in the tenure or occupation of one *Edward Packham*, commonly called or known by the name or names of *Colebecke* and *Pell*, and of and in all the ſhawes and woodlands to the ſaid ſeveral houſes or cottages, or any of them,

them, belonging or appertaining, with their appurtenances, all which ſaid premiſes do contain in the whole by eſtimation 200 acres of land and wood, more or leſs, and are ſeverally ſituate, lying or being in the pariſhes of *Horſmonden* and *Lamberhurſt*, in the ſaid county of *Kent*. And whereas there is a marriage intended and very ſhortly, by the grace of God, to be had and ſolemnized between the aforeſaid *Thomas Bathurſt* and one *Elizabeth Hooper*, ſecond daughter of *John Hooper*, Eſq; late of *Stockbury* in the ſaid county, deceaſed, now this indenture further witneſſeth, that the ſaid *Thomas Bathurſt*, as well for and in recompence and ſatisfaction of a jointure or dower to be had for the ſaid *Elizabeth*, in caſe after ſuch marriage ſo had ſhe the ſaid *Elizabeth* ſhall fortune to ſurvive and over-live him the ſaid *Thomas Bathurſt*, as alſo for the advancement of the iſſues males of the body of the ſaid *Elizabeth*, by him the ſaid *Thomas* to be begotten, doth for himſelf and his heirs covenant and grant, to and with the ſaid Sir *Walter Roberts*, and *Henry Criſp*, their heirs and aſſigns, and to and with every of them, by theſe preſents, that he the ſaid *Thomas Bathurſt*, and

Reciting alſo that a marriage was intended between him and E. Hooper, he by the ſame indenture, for a jointure for the ſaid Elizabeth, and for the advancement of their iſſue male, covenanted, &c. with the truſtees, that he and his heirs, &c. would ſtand ſeiſed of all the premiſes, to the uſe of himſelf and the ſaid Elizabeth for their lives.

and his heirs, and all other perſon or perſons claiming in, by, from or under him or them, immediately from and after the ſealing and delivery of this preſent indenture, ſhall ſtand and be ſeiſed of and in all and ſingular the aforeſaid meſſuages or tenements, cottages, lands, arable, paſture and woodlands, with all and ſingular their appurtenances, except of one parcel of woodland thereof, called *Heyden*, in *Lamberhurſt* aforeſaid, to the uſes and intents hereafter in theſe preſents expreſſed and declared, that is to ſay, to the uſe and behoof of them the ſaid *Thomas* and *Elizabeth*, during and by the full time and term of their natural lives, and of the life of the longeſt liver of them two, and from and after the deaths of them the ſaid *Thomas* and *Elizabeth*, and of the longeſt liver of them two, then to the only and proper uſe and behoof of the firſt heir male of the body of the ſaid *Elizabeth* by the ſaid *Thomas* to be begotten, and of the heirs males of his body lawfully to be begotten; and, for default of ſuch iſſue, to the uſe and behoof of the ſecond heir male of the body of the ſaid *Elizabeth* by the ſaid *Thomas* to be begotten, and to the heirs males

Remainder to the firſt heir male of their bodies.

Remainder to the ſecond heir male, and ſo on to the third, fourth, fifth and ſixth heir male.

males of his body lawfully to be begotten; and for default of such issue, to the use and behoof of the third heir male of the body of the said *Elizabeth* by the said *Thomas* to be begotten, and of the heirs males of his body lawfully to be begotten; and for default of such issue, to the use and behoof of the fourth heir male of the body of the said *Elizabeth* by the said *Thomas* to be begotten, and of the heirs males of his body lawfully to be begotten; and for default of such issue, to the use and behoof of the fifth heir male of the body of the said *Elizabeth* by the said *Thomas* to be begotten, and of the heirs males of his body lawfully to be begotten; and for default of such issue, to the use and behoof of the sixth heir male of the body of the said *Elizabeth* by the said *Thomas* to be begotten, and of the heirs males of his body lawfully to be begotten; and for default of such issue, to the use and behoof of the right heirs of him the said *Thomas Bathurst* for ever, and to no other use or uses, end, intent or purpose whatsoever, as by the said last mentioned indenture now shewn here to the said justices, and proved, read and given in evidence to the said jury, amongst other things it doth

Remainder to the right heirs of Thomas.

and may more fully appear. And the said jurors do further declare upon their said oath, that the said *Thomas Bathurſt*, afterwards, and before the said time when, *&c.* namely, on the twenty-ſixth day of the ſaid month of *February*, in the eighth year of the reign of his ſaid late Majeſty King *Charles* the Firſt, took to wife, and was lawfully married to the above named *Elizabeth Hooper*, and that the ſaid *Thomas Bathurſt*, afterwards, and before the ſaid time when, *&c.* namely, on the twenty-ſeventh day of *February*, in the ninth year of the reign of his ſaid late Majeſty King *Charles* the Firſt, died at *Gowdhurſt* aforeſaid, in the ſaid county of *Kent*, without any iſſue of his body lawfully begotten, and that the ſaid *Elizabeth*, his wife, ſurvived him, and afterwards, and before the ſaid time when, *&c.* namely, on the twenty-eighth day of *February*, in the ninth year of the reign of his ſaid late Majeſty King *Charles* the Firſt, ſhe the ſaid *Elizabeth* entered into the manor and tenements aforeſaid, with the appurtenances, and was thereof ſeiſed, for and during the term of the life of the ſaid *Elizabeth* (the reverſion belonging to the right heirs of the ſaid *Thomas Bathurſt*). And the ſaid jurors do further declare upon their ſaid

That the ſaid T. B. and Elizabeth married.

That T. B. died without iſſue.

That Elizabeth ſurvived, and was ſeiſed for her life.

The expectant reverſion to the right heirs of T. B.

ſaid oath, that afterwards, and before the ſaid time when, &c. (to wit) on the firſt day of *October*, in the year of our Lord 1658, the ſaid *William Bathurſt*, brother of the ſaid *Thomas*, made his laſt will and teſtament in writing (amongſt other things) in theſe *Engliſh* words following: *In the name of God, amen*, I *William Bathurſt*, of *Eltham* in the county of *Kent*, merchant, do make and ordain this my laſt will and teſtament, in manner and form following: I give to my loving wife my reverſion of one third part of the manor of *Pullens*, with the lands and tenements, after the deceaſe of my ſiſter, *Elizabeth Bathurſt*, widow, during her natural life; and as touching my land given to my wife, as aforeſaid, after her deceaſe I give as followeth; to my daughter *Elizabeth*, and her heirs, a quarter part of a third part of the premiſes accruing to me after the deceaſe of the relict of my brother, *Thomas Bathurſt*, deceaſed, called *Pullens*, lying in the pariſhes of *Horſmonden* and *Lamberhurſt*, in the county of *Kent*. *Item*, I give one quarter part of the ſaid meſſuages, lands, and premiſes, to my daughter *Mary*, and her heirs. *Item*, I give to my daughter *Nazareth*, and her heirs, one quarter part of the ſaid meſſu-

That W. B. his brother, made his will.

ages, lands and tenements. *Item*, I give to my daughter *Anne*, and her heirs, one other quarter part of the ſaid meſſuages, lands and premiſſes, as by the ſaid laſt will and teſtament of the ſaid *William Bathurſt*, now ſhewn here to the ſaid juſtices, and read and given in evidence to the ſaid jury, it doth and may (amongſt other things) more fully and at large appear. And the ſaid jurors do further declare upon their ſaid oath, that the ſaid *William Bathurſt*, afterwards, and before the ſaid time when, *&c.* (namely) on the eighth day of *July*, in the year of our Lord 1650, died at *Eltham*, in the ſaid county, and that afterwards, and before the ſaid time when, *&c.* (namely) on the firſt day of *December*, in the thirty-ſecond year of the reign of his preſent Majeſty King *Charles* the Second, the ſaid *Elizabeth Bathurſt*, widow and relict of the above named *Thomas Bathurſt*, died at *Gowdhurſt* aforeſaid, in the ſaid county of *Kent*, and that after the deceaſe of the ſaid *Elizabeth Bathurſt*, widow and relict of the ſaid *Thomas Bathurſt*, and before the ſaid time when, *&c.* namely, on the tenth day of *December*, in the thirty-ſecond year of the reign of his ſaid preſent Ma-

That the ſaid W. B. died.

That the 1ſt of Dec. 32 Car. 2. the ſaid Elizabeth died.

That on the 10th of Dec. 32 Car. 2. the defendant E. B entered as heir to the ſaid T. B.

Majeſty, the ſaid *Edward Bathurſt*, the now defendant, ſon and heir of the ſaid *Thomas Bathurſt*, entered into the ſaid manor and tenements, with the appurtenances, and was ſeiſed thereof as the law requires. And the ſaid jurors do further declare upon their ſaid oath, that the ſaid manor and tenements, with the appurtenances, now are, and for ſo long a time as there is no remembrance of any man to the contrary have been, of the tenure of ancient demeſne of the crown of the King of *England* in fee, and during all that time have been and now are held of the manor of *Aylesford*, in the ſaid county of *Kent*, and that the ſaid manor of *Ayleſford*, with the appurtenances, now is, and for ſo long a time as there is no remembrance of any man to the contrary hath been, ancient demeſne of the crown of the kingdom of *England*. And the ſaid jurors do further declare upon their ſaid oath, that the ſaid *Edward Bathurſt*, the ſon (the now defendant) being ſeiſed as aforeſaid of and in the ſaid manor and tenements, with the appurtenances (amongſt other things) it is enrolled among the pleas at *Weſtminſter*, before Sir *Francis North*, Knight, and his brethren the juſtices of the court of *Common Pleas* of

That the ſaid manor and tenements are ancient demeſne held of the manor of Aylesford.

That the defendant being ſeiſed, it is recorded amongſt the pleas at Weſtminſter of Trin. 33 Car. 2. in the Common Pleas.

That the defendant was attached in writ of disceit to answer to the said Thomas Colepeppyre, lord of the manor of Aylesford, to reverse a common recovery.

our Sovereign Lord the King, of *Trinity* term, in the thirty-third year of the reign of his present Majesty, that the said *Edward Bathurst*, the son, by the name of *Edward Bathurst*, Esq; son and heir of *Edward Bathurst*, his father, and heir to *Thomas Bathurst*, Esq; was attached to answer to Sir *Thomas Colepeppyre*, Baronet, son and heir of *Richard Colepeppyre*, Baronet, and heir to Sir *William Colepeppyre*, Baronet, of a plea, that whereas the said *Thomas Colepeppyre* for ten years then last past had been and then was seised of the manor of *Aylesford*, with the appurtenances, in the said county, in his demesne as of fee, which said manor, with the appurtenances, then was, and for so long a time as there was no remembrance of any man to the contrary had been, ancient demesne of the crown of *England*, and all the lands and tenements which were held of that manor had time out of mind been pleadable and impleaded in the court of the said manor, before the steward thereof for the time being, by his Majesty's writ of right close, and not elsewhere, according to the custom of the said manor time out of mind therein used and approved of. And that the said *Thomas Bathurst*, in his life-time,

and

and *George Mapleſden*, gentleman, and *James Sarys*, gentleman, (being now likewiſe dead) well knowing the premiſes, but contriving craftily to deceive and defraud the ſaid *William* and his ſucceſſors, lords of the ſaid manor, of the profit of that manor, they the ſaid *George Mapleſden* and *James Sarys*, on the ſeventeenth day of *October*, in the ſeventh year of the reign of his late Majeſty King *Charles* the Firſt (he the ſaid *William* being ſeiſed of the ſaid manor, with the appurtenances in his demeſne as of a fee) proſecuted out of the high court of Chancery of his ſaid late Majeſty (that court then being held at *Weſtminſter*, in the county of *Middleſex*) his ſaid late Majeſty's writ of entry *ſur diſſeiſin en le poſt* againſt the ſaid *Thomas Bathurſt*, of the manor of *Pullens*, with the appurtenances, and of one meſſuage, one dove-houſe, one garden, fifty acres of meadow, ten acres of paſture, one hundred acres of wood, a rent of ſeven ſhillings, and a rent of fifteen diſhes, with the appurtenances, in *Horſmonden* and *Lamberhurſt*, in the ſaid county of *Kent*, directed to the ſheriff of the ſame county, and returnable before his ſaid late Majeſty's juſtices at *Weſtminſter* aforeſaid, on the morrow of *All-*

Souls then next enſuing, by virtue of which ſaid writ, and the return thereof, ſuch proceedings in law were made and had thereupon on the ſaid morrow of *All-Souls*, and other concurring circumſtances requiſite in ſuch caſes, that they the ſaid *George* and *James*, in *Michaelmas* term in the ſaid ſeventh year, recovered againſt the ſaid *Thomas Bathurſt* the ſaid manor of *Pullens*, and the tenements and rents, with the appurtenances, as by the record and proceedings thereof now remaining in his ſaid Majeſty's court, before his juſtices (to wit) at *Weſtminſter* aforeſaid, it doth and may more fully and at large appear; which ſaid recovery was ſuffered to the uſe of the ſaid *Thomas Bathurſt* and his heirs for ever, and by means of the ſaid recovery, and by force of an act made in the parliament of our late Sovereign *Henry* the Eighth, late King of *England*, on the fourth day of *February*, in the twenty-ſeventh year of his reign, at *Weſtminſter*, in the county of *Middleſex*, for transferring uſes into poſſeſſion, he the ſaid *Thomas Bathurſt* became ſeiſed of and in the ſaid manor of *Pullens*, and of the tenements and rents aforeſaid, with the appurtenances, in his demeſne

demeſne as of a fee. And he the ſaid *Thomas Colepeppyre* further declared, that the manor, tenements, and rents, with the appurtenances ſpecified in the ſaid writ of entry at the time of ſuing out of the ſaid writ, and alſo at the time of the ſaid recovery thereupon had, were held of the ſaid *W. C.* as of his manor of *Aylesford* aforeſaid, and during all the time aforeſaid, until the day of ſuing out of the ſaid writ, according to the cuſtom of the ſaid manor of *Aylesford*, were pleadable and impleaded in the court of the ſaid manor, and not elſewhere, by which recovery, ſuffered in the manor aforeſaid, the ſaid manor of *Pullens*, and the tenements aforeſaid, with the appurtenances, became a frank fee, and pleadable and impleaded at common law to the diſceit of the court of the ſaid *William*, lord of the manor of *Aylesford* aforeſaid, and to the manifeſt danger of the diſinheriſon of the ſaid *T. C.* to the damage of the ſaid *T. C.* forty pounds, and whereupon the ſaid *T. C.* by *Hope Gyfford*, his attorney, complained, that whereas the ſaid *T. C.* for ten years laſt paſt had been and then was ſeiſed of the manor of *Aylesford*, with the appurtenances, (and ſo reciting the count in the writ of diſceit in the ſame

The declaration on the writ of diſceit.

ſame manner with the writ above mentioned, till you come to the words) to the damage of the ſaid *T. C.* forty pounds, and thereof he brings his ſuit, *&c.* And the ſaid *E. B.* the now defendant, by *Edmund Hadſell* his attorney, came and defended the force and injury when, *&c.* and pleaded that he could not deny the action of the ſaid *T. C.* nor but that the ſaid *Thomas* was, and for ten years laſt paſt had been, ſeiſed of the ſaid manor of *Aylesford*, with the appurtenances, in his demeſne as of a fee, nor but that the ſaid manor with the appurtenances then was, and for ſo long a time as there had been no remembrance of any man to the contrary had been, ancient demeſne of the crown of *England*, nor but that all the lands and tenements which were held of the ſaid manor were, time out of mind, pleadable and impleaded in the court of the manor aforeſaid, before the ſteward thereof, for the time being, by his Majeſty's writ of right cloſe, and not elſewhere, according to the cuſtom of the ſaid manor time out of mind uſed and approved of; and that the manor with the tenements and rents aforeſaid, ſpecified in the ſaid writ of entry at the time of ſuing out of the ſame, and at the time of the ſaid recovery there-

upon

upon had and ſuffered, were held of the ſaid *W. C.* as of his manor of *Aylesford* aforeſaid, and during the time aforeſaid, till the day of ſuing out the ſaid writ, had been pleadable and impleaded in the court of the ſaid manor, according to the cuſtom of the ſame manor of *Aylesford*, as the ſaid *T. C.* had above alledged in his writ and declaration aforeſaid, therefore it was adjudged that the ſaid *T.* have again his ſaid court (that is) that the manor, rents, and tenements aforeſaid, with the appurtenances, ſpecified in the ſaid writ of entry, be pleaded, removed, and brought back again into the ſaid court, within the juriſdiction thereof, notwithſtanding the ſaid judgment given upon the ſaid writ of entry, in his ſaid late Majeſty's court at *Weſtminſter* aforeſaid, and that the ſaid recovery be annulled and made entirely of no effect; and that the ſaid *T.* be reſtored to all things which he loſt, by reaſon of the ſaid judgment given upon the ſaid writ of entry, and that the ſaid *Edward Bathurſt*, the defendant, be amerced as by the record thereof now remaining at *Weſtminſter*, in the county of *Middleſex*, recorded it doth and may more fully appear. And the ſaid jurors do further declare upon their ſaid oath,

The judgment for the plaintiff in the writ of diſceit.

The defendant amerced.

oath, that afterwards, and before the ſaid time when, &c. (namely) on the firſt day of *April*, in the thirty-fourth year of the reign of his preſent Majeſty *Charles* the ſecond now King of *England* &c. ſhe the ſaid *Elizabeth Bathurſt*, widow, late wife of the ſaid *William Bathurſt*, deceaſed, entred into the manor and tenements, with the appurtenances aforeſaid, and was thereof poſſeſſed, and that *Elizabeth Bathurſt*, widow, relict of the ſaid *William Bathurſt*, afterwards, and before the ſaid time when, &c. (namely) on the ſaid ſeventh day of the ſaid month of *April*, in the thirty-fourth year aforeſaid, made and as her deed delivered an indenture ſealed with her ſeal, executed between the ſaid *Elizabeth Bathurſt* laſt above named, by the name of *Elizabeth Bathurſt* of *Batterſey*, in the county of *Surry*, widow, relict of *William Bathurſt*, late of *Eltham* in the county of *Kent*, deceaſed, of the other part, and *Thomas Crampe*, by the name of *Thomas Crampe*, of *Lamberhurſt* in the county of *Kent*, huſbandman, of the other part, bearing date on the ſaid 7th day of *April*, in the ſaid thirty-fourth year, the tenor of which ſaid indenture followeth in theſe words. The reporter thought it unneceſſary to inſert this indenture, it being a com-

It is further found that the ſaid Elizabeth, relict of the ſaid William Bathurſt, entered 1ſt April, 34. Car 2.

and on the 7th by indenture leaſed the premiſes to the leſſor of the plaintiff for five years.

common leaſe for five years, made by *Elizabeth Bathurſt*, to the ſaid *Crampe*, ſo that after mentioning the leaſe, the entry goes on thus; and the ſaid jurors do further declare upon their ſaid oath, that the ſaid *Elizabeth Bathurſt*, widow, relict of the ſaid *William Bathurſt*, is now alive and in good health; and then the entry mentions that the jury found the leaſe, entry, and ouſter in the declaration, and made the proper general concluſion but whether, *&c.*

And that Elizabeth is now alive.

The matter upon which the plaintiff's council inſiſted in the argument of this caſe was, that the indenture made by *Paul Bathurſt* was void, becauſe there was found no execution of it, either by livery, ſeiſin, attornment, or otherwiſe, and by conſequence the lands deſcended to *Edward* his ſon and heir, and from him, the lands being gavel-kind lands, to his four ſons, and then the entry and ſeiſin of *T.* the elder brother, was an entry and ſeiſin of all the other brothers, as coparceners with him, and then *William* the third brother, and the huſband of the ſaid *Elizabeth*, had good power to deviſe the third part to the ſaid *Elizabeth*, and by conſequence the leaſe made to her by *Crampe*, and the leaſe

The Caſe, Lut. 754.

leaſe made by him to the plaintiff, are good: But this was anſwered by the defendant's councel, that the court of themſelves cannot take cognizance what lands in the county of *Kent* are of the cuſtom of gavel kind, without a proper allegation or proof thereof, on record, according to *Littleton*, ſect. 265. and ſee my Lord *Coke's* comment thereupon, for of this opinion was the whole court.

Verdict in ejectment by not informed in original.

And the ſaid defendant, by *A. B.* his attorney, comes and defends the force and injury when, *&c.* and upon this the ſaid plaintiff prays that the ſaid defendant to his declaration aforeſaid may anſwer, upon which the ſaid attorney of the ſaid defendant ſays, that he is not informed by the ſame defendant his maſter to give any anſwer for the ſaid defendant to the ſame plaintiff, in the plea aforeſaid, nor ſays any thing elſe thereto, in bar or preclusion of the action of the ſaid plaintiff aforeſaid; whereby the ſame plaintiff remains againſt the ſaid defendant therein undefended; wherefore it is conſidered that the ſaid plaintiff do recover, againſt the ſaid defendant, the poſſeſſion of his term aforeſaid yet to come of and in the tenements aforeſaid

Pract. Reg. 105. 621.

aforeſaid, with the appurtenances, and his damages by reaſon of the treſpaſs and ejectment aforeſaid; but becauſe it is not known what damages the ſaid plaintiff hath ſuſtained by reaſon of the treſpaſs and ejectment aforeſaid, the ſheriff is commanded that, by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the ſaid plaintiff hath ſuſtained, as well by reaſon of the treſpaſs and ejectment aforeſaid, as for his coſts and charges by him about his ſuit in this behalf expended, and the inquiſition which, *&c.* let the ſheriff certify from the —— day of —— whereſoever, *&c.* under the ſeal *&c.* and the ſeals, *&c.* the ſame day is given to the ſaid plaintiff, *&c.* and upon this the ſame plaintiff prays the writ of the Lord and Lady the King and Queen, to the ſheriff of the county aforeſaid to be directed, to cauſe him to have poſſeſſion of his term aforeſaid, of and in the tenements aforeſaid, with the appurtenances, yet to come, and to him it is granted returnable at the ſaid time, *&c.*

Writ of poſſeſſion awarded.

An

An Ejectment of a Meſſuage and Lands in Brinton, Brinningham, *and* Stodey, *on the demiſe of* Cicely Cooke, *and* Mary Cooke.

Norton v. Ladd Trin. 1. K. Ja. Roll. 695.

Lut. 756. verdict as to part for the plaintiff.

AS to nine acres, three roods and an half, with the appurtenances, part of the tenements ſpecified in the within declaration, with the appurtenances, the ſaid jurors declare upon their oath, that the ſaid *John Ladd* is guilty of the treſpaſs and ejectment within written, in the nine acres, three roods and an half of land aforeſaid, with the appurtenances, as the ſaid *John Norton* doth within complain againſt him, and they aſſeſs the damages of the ſaid *John Norton*, by reaſon of the ſaid treſpaſs and ejectment, beſides his expences and coſts laid out by him about his ſuit in that particular, to ſix pence, and for his expences and coſts, to forty ſhillings; and as to one garden, one orchard, two acres and three roods of land, ten acres of meadow, and twenty acres of paſture, with the appurtenances, other other part of the tenements ſpecified in the within declaration, with the appurtenances, they declare upon their ſaid oath

that

that the ſaid *John Ladd*, is not guilty of the within written treſpaſs and ejectment, in the ſaid one garden, one orchard, two acres, and three roods of land, ten acres of meadow, and twenty acres of paſture, with the appurtenances, in ſuch manner and form as the ſaid *John Ladd* hath within alledged in his plea; and as to one meſſuage, thirty-ſeven acres, one rood and an half of land, reſidue of the tenements, with the appurtenances, within mentioned in the ſaid declaration, the ſaid jurors do further declare upon their ſaid oath, that long before the ſaid within written time, when the within ſpecified caſe was made, one *Edmund Cook* ſenior was ſeiſed in his demeſne as of a fee, at the will of the Lord of the manor of *Thorneg, cum membris*, in the county of *Norfolk*, according to the cuſtom of the manor aforeſaid, of and in the ſaid one meſſuage, thirty-ſeven acres, one rood and an half of land, with the appurtenances, aforeſaid, *Brinton*, *Brinnington*, and *Stodey*, being cuſtomary tenements, held of the Lord of the manor aforeſaid, and parcel of the manor of *Thorneg, cum membris*, in the ſaid county of *Norfolk*, and demiſed and demiſable by the Lord of the manor, or his ſteward thereof for the time being,

As to another part not guilty.

As to another part, a ſpecial verdict that one Edmund Cook the elder was ſeiſed in fee of lands that were copyhold lands of the manor of Thorneg.

by a copy of the court-rolls of the ſaid manor, to any perſon or perſons whatſoever willing to take the ſame, in fee ſimple or otherwiſe, at the will of the Lord according to the cuſtom of the manor aforeſaid; and the ſaid *Edmund Cook* ſenior, being thus ſeized thereof, and having iſſue three ſons of his body lawfully begotten, *Robert Cook*, *Edmund Cook*, and *John Cook*, and three daughters *Cicely*, *Ellen*, and *Alice*, he the ſaid *Edmund Cook* afterwards, and before the within written time, when the within mentioned leaſe was made, at the court of the manor of *Thorneg*, *cum membris*, aforeſaid, held there on the 5th day of *October*, in the year of our Lord 1659, perſonally and in open court before the whole homage, ſurrendered into the hands of the Lords of the manor aforeſaid, by the hands of the ſteward of the court, all his cuſtomary meſſuages, lands, and tenements whatſoever, as well in poſſeſſion as in reverſion, within that manor, by copy of the court-rolls, according to the cuſtom of the manor aforeſaid, to ſuch uſe or uſes as he ſhould, by his laſt will and teſtament in writing, limit or appoint, and that the ſaid *Edmund Cook*, ſenior, had then *Ann* his wife, and afterwards (namely) on the 9th day

That he had 3 ſons viz. Robert, Edmund, and John, and 3 daughters Cicely, Ellen, and Alice.

That on the 5th October 1659 he ſurrendered to the u e of his will.

day of *June*, in the year of our Lord 1668, made and ordained his laſt will and teſtament in writing, and thereby gave and deviſed in theſe following Engliſh words (to wit) I give and bequeath to *Ann*, my dear and well beloved wife, all and every my houſes, barns, ſtables, out-houſes, yards, gardens, orchards, lands, tenements, and hereditaments whatſoever, within the county of *Norfolf*, of me the ſaid *Edmund*, for and during the term of her natural life, except ſuch lands, and ſuch room and rooms as be hereafter excepted, upon condition notwithſtanding, (that is to ſay) ſhe my ſaid wife paying unto *Edmund Cook* my ſon, year and yearly during the term of her natural life, the ſum of ten pounds; and further I give and bequeath unto my ſon *Edmund*, all my ſaid houſes, barns, ſtables, out-houſes, offices, yards, gardens, orchards, lands, tenements, and hereditaments whatſoever, ſituate, lying, and being within the ſaid county, and hereby given unto *Ann* my ſaid wife for the term of her natural life, to have likewiſe hold and enjoy the ſame and every parcel thereof, to him the ſaid *Edward* my ſon and his heirs for ever, as by the ſaid laſt will and teſtament of the ſaid *Edmund Cook* the father, now ſhewn here

The will of Edmund Cook the elder in hæc verba.

in court, it doth more fully appear. And the ſaid jurors do further declare upon their ſaid oath, that after the firſt day of *Auguſt*, in the ſaid year of our Lord 1668, the ſaid *Edmund Cook* the teſtator died, at *Brinton* aforeſaid, after whoſe death (namely) at a court ſpecially held for the ſaid manor of *Thorneg cum membris*, on the 8th day of *May* in the twenty fourth year of the reign of his preſent Majeſty *Charles* the ſecond, now King of *England*, &c. the ſaid *Edmund Cook*, the ſon of the ſaid *Edmund Cook* deceaſed, came and brought into the ſame court, the ſaid laſt will and teſtament of the ſaid *Edmund Cook* deceaſed, and craved the favour of the Lord of the ſaid manor, to admit him tenant to the remainder of the ſaid one meſſuage, thirty-ſeven acres and one rood and an half of land, with the appurtenances, whereupon the ſaid *Edmund Cook* the ſon, at the ſame court of the manor aforeſaid, held at the ſaid manor on the day and year laſt above mentioned, was admitted tenant to the ſaid remainder of the ſaid tenements, with the appurtenances, to hold to him and his heirs after the deceaſe of the ſaid *Ann*, according to the cuſtom of the manor aforeſaid, and the ſaid remainder was then and there granted

That the teſtator died on the 1ſt of Auguſt 1668.

That the ſaid Edmund Cook, the ſon was admitted to the reverſion deviſed to him upon producing the will at the court of the manor on the 8th of May 24 Car. 2.

to

to the ſaid *Edmund* the ſon, by the Lord of the manor, according to the cuſtom of the manor aforeſaid, to hold the ſaid tenements, with the appurtenances, to the ſaid *Edmund* the ſon and his heirs, after the deceaſe of the ſaid *Ann*, according to the intent and purpoſe of the will aforeſaid, at the will of the Lord, according to the cuſtom of the ſaid manor, as by the court-rolls of the ſaid court made thereof, here brought and ſhewn to this court, and read and given in evidence to the ſaid jurors, doth more fully appear, whereby the ſaid *Edmund* the ſon was ſeiſed of the ſaid remainder, as the law requires, and being thus ſeiſed thereof, afterwards (to wit) on the ſame day and year laſt above mentioned, he the ſaid *Edmund Cook* the ſon came to the ſaid court of the manor aforeſaid, in his own perſon, and in open court ſurrendered into the hands of the Lord of the manor aforeſaid, by the hand of the ſteward of that manor, the ſaid one meſſuage, thirty-ſeven acres one rood and an half of land, with the appurtenances, to ſuch uſe or uſes as he ſhould by his laſt will and teſtament in writing limit and appoint according to the cuſtom of the manor aforeſaid; and the ſaid jurors do further declare upon their ſaid oath that

As by the copy of the court-rolls &c.

That at the ſame court the ſaid Edmund the ſon ſurrendered to the uſe of his will.

that the ſaid *Edmund Cook*, the ſon, afterwards (namely) on the nineteenth day of *May*, in the year of our Lord 1674, made his laſt will and teſtament in writing, and thereby gave and deviſed in theſe *Engliſh* words following (viz.) I give and bequeath unto *Alice Cook*, my well beloved ſiſter, all my lands, houſes, tenements and hereditaments whatſoever, for and during the term of her natural life, after the deceaſe of *Anne Cooke*, my mother. *Item*, I give and bequeath unto *John Cook*, my well beloved brother, the whole remainder of all thoſe lands and tenements which I have given to *Alice Cook*, my ſiſter, for life, if ſo be that he ſhall ſurvive my ſiſter *Alice*, but if it ſhall happen that he ſhall depart this life before my ſiſter *Alice*, then my will and mind is that the ſaid whole remainder and reverſion of all the ſaid lands and tenements given to him ſhall be to the only uſe and behoof of my ſiſters *Cicely*, *Ellen*, and *Alice*, and to their heirs for ever, as by the ſaid laſt will and teſtament of the ſaid *Edmund*, the ſon, now brought here and ſhewn to this court, and read and given in evidence to the ſaid jury, it doth more fully appear: and the ſaid *Edmund*, the ſon, afterwards, namely,

His will ſet forth in hæc verba.

namely, on the firſt day of *June*, in the aforeſaid year of our Lord, died at *Brinton* aforeſaid, without iſſue of his body lawfully begotten. And the ſaid jurors upon their ſaid oath do further declare, that the ſaid *Cicely*, *Ellen*, and *Alice*, ſiſters to the ſaid *Edmund*, the ſon, afterwards, namely, on the firſt day of *Auguſt*, in the year of our Lord 1675, died at *Brinton* aforeſaid, without any iſſue of their or either of their bodies lawfully begotten. And the ſaid *Anne Cook*, widow, the mother, ſurvived the ſaid *Cicely*, *Ellen*, and *Alice*, and afterwards, namely, on the firſt day of *September*, in the year of our Lord 1675, the ſaid *Anne Cook* died at *Brinton* aforeſaid, and that afterwards, namely, on the nineteenth day of *January*, in the year of our Lord 1680, the ſaid *John Cook*, brother to the ſaid *Edmund Cook* the ſon, deceaſed, came into the court of the ſaid manor of *Thorneg*, *cum membris* aforeſaid, held on the ſame day and year laſt mentioned, and brought into that court the laſt will and teſtament of the ſaid *Edmund* the ſon, his brother, made in writing, bearing date on the nineteenth day of *May*, in the year of our Lord 1674 aforeſaid; and the ſaid *John Cook* craved the favour of the lord of the

That Edmund the ſon died 1 June, 1674, and that the ſaid ſiſters, on the 1ſt of Aug. 1675, died without iſſue. The firſt of Sept. Anne the mother died.

That the ſaid J. Cook, brother of Edmund, upon producing his brother's will, was admitted.

that the ſaid *Edmund Cook*, the ſo afterwards (namely) on the nineteen day of *May*, in the year of our Lo 1674, made his laſt will and teſtament writing, and thereby gave and deviſed theſe *Engliſh* words following (viz.) give and bequeath unto *Alice Cook*, m well beloved ſiſter, all my lands, houſe tenements and hereditaments whatſoeve for and during the term of her natura life, after the deceaſe of *Anne Cooke*, m mother. *Item*, I give and bequeath unt *John Cook*, my well beloved brother, th whole remainder of all thoſe lands an tenements which I have given to *Alic Cook*, my ſiſter, for life, if ſo be that h ſhall ſurvive my ſiſter *Alice*, but if i ſhall happen that he ſhall depart this life before my ſiſter *Alice*, then my will and mind is that the ſaid whole remainder and reverſion of all the ſaid lands and tenements given to him ſhall be to the only uſe and behoof of my ſiſters *Cicely*, *Ellen*, and *Alice*, and to their heirs for ever, as by the ſaid laſt will and teſtament of the ſaid *Edmund*, the ſon, now brought here and ſhewn to this court, and read and given in evidence to the ſaid jury, it doth more fully appear: and the ſaid *Edmund*, the ſon, afterwards, namely,

His will ſet forth in hæc verba.

namely, on the first day of *June*, in the aforesaid year of our Lord, died at *Brinton* aforesaid, without issue of his body lawfully begotten. And the said jurors upon their said oath do further declare, that the said *Cicely*, *Ellen*, and *Alice*, sisters to the said *Edmund*, the son, afterwards, namely, on the first day of *August*, in the year of our Lord 1675, died at *Brinton* aforesaid, without any issue of their or either of their bodies lawfully begotten. And the said *Anne Cook*, widow, the mother, survived the said *Cicely*, *Ellen*, and *Alice*, and afterwards, namely, on the first day of *September*, in the year of our Lord 1675, the said *Anne Cook* died at *Brinton* aforesaid, and that afterwards, namely, on the nineteenth day of *January*, in the year of our Lord 1680, the said *John Cook*, brother to the said *Edmund Cook* the son, deceased, came into the court of the said manor of *Thorneg*, *cum membris* aforesaid, held on the same day and year last mentioned, and brought into that court the last will and testament of the said *Edmund* the son, his brother, made in writing, bearing date on the nineteenth day of *May*, in the year of our Lord 1674 aforesaid; and the said *John Cook* craved the favour of the lord of the

That Edmund the son died 1 June, 1674, and that the said sisters, on the 1st of Aug. 1675, died without issue. The first of Sept. Anne the mother died.

That the said J. Cook, brother of Edmund, upon producing his brother's will, was admitted.

ſaid manor to admit him tenant of the premiſes, according to the intent and purport of the ſaid ſurrender and laſt will of the ſaid *Edmund Cook*, the ſon, whereupon the ſaid *John Cook* was at the ſaid court of the ſame manor there held, on the day and year laſt above mentioned, admitted a tenant to the ſaid one meſſuage, thirty-ſeven acres one rood and an half of land, with the appurtenances, according to the cuſtom of the manor aforeſaid; and the ſaid tenements, with the appurtenances, were then and there granted in the ſame court to the ſaid *John Cook* by the lord of the ſaid manor, according to the cuſtom thereof, to hold to the ſaid *John*, according to the intent and purport of the ſaid ſurrender and laſt will of the ſaid *Edmund Cook*, the ſon, at the will of the lord, according to the cuſtom of the manor aforeſaid, as by the copy of the court-rolls laſt above mentioned made thereupon not ſhewn, brought here into court, and given in evidence to the ſaid jurors, more fully may appear, whereby the ſaid *John Cook* entered into the ſaid tenements, with the appurtenances laſt above mentioned, and was ſeiſed thereof as the law requires; and being thereof thus ſeiſed, he the ſaid *John Cook* afterwards,

wards, namely, on *the twenty-ſixth day* of *February*, in the year of our Lord 1682, by his writing, purporting a letter of attorney under the hand and ſeal of the ſaid *John Cook*, bearing date the day and year laſt above mentioned, and atteſted by *J. C.* ſenior, and *F. W.* junior, ſufficiently authorized one *J. C.* junior, gentleman, a cuſtomary tenant of the manor aforeſaid, to ſurrender into the hands of the lord of the ſaid manor, according to the cuſtom of that manor, the ſaid one meſſuage, thirty-ſeven acres and one rood and an half of land, to the uſe and behoof of the ſaid *John Ladd*, a ſurgeon, his heirs and aſſigns for ever, upon this condition, that if the ſaid *John Cook*, his heirs, executors and aſſigns, or any of them, ſhould pay or cauſe to be paid to the ſaid *John Ladd*, his executors, adminiſtrators or aſſigns, the ſum of one hundred and ſix pounds, upon the twenty-ſeventh day of *February*, which ſhould be in the year of our Lord 1683, at or in the dwelling-houſe of the ſaid *John Ladd*, ſituate in *Norwich* aforeſaid, that then the ſaid laſt mentioned ſurrender ſhould be void, or otherwiſe ſhould remain in its full force, afterwards (to wit) on the fourth day of *March*,

That the ſaid John Cook the 26th of Feb. 1682, made a letter of attorney, &c. to one J. C. a cuſtomary tenant, &c. to ſurrender to the uſe of John Ladd, and his heirs, upon condition to be void upon payment of 106l. 27th of Feb. 1683.

That on the 4th day of March the attorney ſurrendered accordingly.

March, in the year of our Lord 1682, the ſaid *John Crito*, junior, came there into the court of the manor of *Thorneg cum membris* aforeſaid, held at that manor on the 6th day of *March*, in the year of our Lord 1682, before *William Burleigh*, Eſq; ſteward, and by virtue of the ſaid writing or letter of attorney made to him, under the hand and ſeal of the ſaid *John Cook*, bearing date on the twenty-ſixth day of *February*, in the ſaid year of our Lord 1682, according to the cuſtom of the manor aforeſaid, in the name of the ſaid *John Cook*, ſurrendered into the hands of the lord of the ſaid manor, by the hands of the ſaid ſteward, the lands and tenements laſt above mentioned, to the uſe and behoof of the ſaid *John Ladd*, his heirs and aſſigns for ever, upon this condition, that if the ſaid *John Cook*, his heirs, executors, adminiſtrators or aſſigns, or any of them, ſhould pay or cauſe to be paid to the ſaid *John Ladd*, his executors, adminiſtrators or aſſigns, the ſum of one hundred and ſix pounds, upon the twenty-ſeventh day of *February*, which ſhould be in the year of our Lord 1683, at or in the dwelling-houſe of the ſaid *John Ladd*, ſituate in *Norwich* aforeſaid, that then the ſaid laſt mentioned ſurrender ſhould be void, otherwiſe

wiſe ſhould remain in full force. And the jurors further declare upon their ſaid oath, that the ſaid *John Cook* afterwards, and before the within written time when the within ſpecified leaſe was made, namely, on the twentieth day of *February*, in the firſt year of the reign of his preſent Majeſty *James* the Second, King of *England*, *&c.* died at *Brinton* aforeſaid, without iſſue of his body lawfully begotten, and that the ſaid *Robert Cook* then and there likewiſe died, and that afterwards (to wit) on the twelfth day of *May*, in the firſt year of the reign of his ſaid preſent Majeſty, the ſaid *John Ladd* came into the court of the ſaid manor held at the ſaid manor, at the day and year laſt above mentioned, and ſhewed that neither the ſaid ſum of one hundred and ſix pounds, or any part thereof, was paid at the day and year above mentioned for the payment thereof, according to the intent and purport of the laſt mentioned ſurrender, and prayed the favour of the lord of the ſaid manor to admit him tenant to the premiſes aforeſaid; and thereupon the ſaid *John Ladd* was at the ſame court of the manor aforeſaid admitted tenant to the ſaid meſſuage, thirty-ſeven acres and a rood and an half of land, with the appur-

That John Cook died the 20th of Feb. 1ſt King James the Second, without iſſue, and Robert Cook died at the ſame time. That afterwards, on the 12th of May, 1ſt King James the ſecond, John Ladd came into court, and was admitted.

purtenances, according to the cuſtom of the manor aforeſaid, and thoſe tenements were then and there granted to the ſaid *John Ladd* in the ſame court, by the lord of the manor, according to the cuſtom of that manor, to hold to the ſaid *John Ladd*, his heirs and aſſigns, according to the intent and purport of the laſt mentioned ſurrender, at the will of the lord, according to the cuſtom of the manor aforeſaid, as by the copy of the court-rolls laſt above mentioned made thereon, now ſhewn and brought into this court, and given in evidence to the ſaid jurors, more fully may appear; whereupon the ſaid *John Ladd* entered into the ſaid meſſuage and lands, with the appurtenances laſt above mentioned, and was ſeiſed thereof as the law requires. And the ſaid jurors do upon their ſaid oath further declare, that *Cicely Cook*, and *Mary Cook*, named in the within declaration, are couſins, and next heirs to the ſaid *Edmund Cook*, the ſon, and to the ſaid *John Cook* and to the ſaid *Cicely*, *Ellen*, and *Alice*, daughters of the ſaid *Edmund Cook* the elder, (that is to ſay) daughters and heirs of *Robert Cook*, brother to the ſaid *Edmund*, the ſon, and to *John Cook*, which ſaid *Robert* was the eldeſt ſon, and heir to

As by the copy of court-rolls.

That the leſſors of the couſins, and heirs to the ſaid Edmund Cook, the ſon, and of John Cook, and of the ſaid Cicely, Ellen, and Alice, and ſheweth how.

to the ſaid *Edmund Cook* the elder, grandfather of the ſaid *Cicely* and *Mary*, named in the declaration aforeſaid, and father to the ſaid *Robert* and *Edmund*, junior, and *John Cook*, and that the ſaid *John Ladd* claims his right, title and intereſt in the premiſes aforeſaid by virtue of the ſurrender and admiſſion laſt above mentioned. And the ſaid jurors do further declare upon their ſaid oath, that the ſaid *Cicely Cook*, named in the declaration aforeſaid, after the deceaſe of the ſaid *John Cook*, and before the ſaid time when the leaſe aforeſaid was made, namely, on the firſt day of *March*, in the firſt year of the reign of his ſaid preſent Majeſty, entered into the ſaid one meſſuage and thirty-ſeven acres and one rood and an half of land, with the appurtenances, and was ſeiſed thereof as the law requires. And further it was mentioned, that they found the leaſe, entry, and ouſter, and if the defendant be guilty of the treſpaſs and ejectment, *&c.* then they find him ſo, and if not, then they find him not guilty.

The ſole queſtion upon this caſe was, whether an eſtate for life or in fee paſs to John Cook, *by the will of* Edmund *his brother,*

by

by the words, I give the whole remainder of all thoſe lands and tenements which I have given to my ſiſter Alice, *and the caſe was argued by* Holt, *King's Serjeant, for the plaintiff, and* Birch *for the defendant, and afterwards by* Baldock *for the plaintiff, and* Levinz *for the defendant, and judgment was given for the defendant by the opinion of the whole court; for they apprehended, that the deviſe to* John Cook *was all one in effect as if the teſtator had deviſed to* John *all the reſidue of his eſtate in all the lands which he had deviſed to his ſiſter* Alice, *and that the words whole remainder are properly relative to the eſtate in him undiſpoſed of to his ſiſter* Alice, *and that thoſe words evidently do not relate to the quantity of the lands that the teſtator intended to deviſe to his brother* John; *for it is plain, and without doubt, that he deviſed all the lands to his ſiſter* Alice. *And it is alſo as plain and expreſs, that he had deviſed all the lands to his brother which he had deviſed to his ſiſter* Alice. *Thoſe words properly and naturally relate to the quantity of the eſtate which the teſtator intended to give his brother* John, *(that is) all his remainder, which is all one in effect as all his eſtate; for if the words whole remainder*

See Lutw. 762-3.

ſhall

ſhall be only relative to the lands which he intended to deviſe to John, *that deviſe would be altogether ineffectual, for he has no ſuch remainder, for it is impoſſible that there ſhould be a remainder or reſidue, which is all one in this caſe, of that which is deviſed to* Alice, *for all was deviſed to her already, and therefore it ſeems to be of neceſſity that thoſe words ſhould be conſtrued to relate to the eſtate, that the teſtator intended to give to his brother; and as to what hath been mentioned, that this was a conſtruction to the diſinheritance of the heir at law, it was ſaid, that was entirely out of the queſtion, becauſe there could be no doubt that the heir at law was diſinherited, either by the deviſe to the brother or to the ſiſters, for the one or the other hath a fee ſimple upon a contingency.*

King v. Dilliſton. Trin. 1. James. Roll 1322.

That the tenements in queſtion are copyhold lands of the manor of Swefling Campſey.

AND the jurors of the jury, whereof mention is within made, being called likewiſe appeared, who being choſen, tried, and ſworn to declare the truth of the within contents, declare upon their oath, that the within written tenements, with the appurtenances, wherein the treſpaſs and ejectment within written are ſuppoſed to have been committed, are, and for ſo long

Lutw. 765.

long a time as there is no remembrance of any man to the contrary have been, parcel and cuſtomary tenements of the manor of *Swefling Campſey*, with the appurtenances, in the ſaid county of *Suffolk*, and have been during all that time demiſed and demiſable by a copy of the court-rolls of that manor, by the Lord or Lady thereof, for the time being, to whatſoever perſon or perſons willing to take the ſame, in fee ſimple or otherwiſe, at the will of the Lord or Lady, according to the cuſtom of the manor aforeſaid, and that before the within written time, when the treſpaſs and ejectment aforeſaid are ſuppoſed to have been done, one *Henry Warner* and *Elizabeth* his wife, in right of the ſaid *Elizabeth*, were ſeiſed of the tenements within written, with the appurtenances, in which, *&c.* in their demeſne as of a freehold, for the term of the life of the ſaid *Elizabeth*, the remainder thereof belonging to *John Ballett* and his heirs, at the will of the Lord, according to the cuſtom of the manor aforeſaid. And the ſaid jurors do upon their ſaid oath further declare, that within the manor aforeſaid there now is, and for ſo long a time as there is no memory of man to the con-

That Henry Warner and Elizabeth his wife, were ſeiſed in right of Elizabeth for her life.

Remainder to John Ballett in fee.

contrary, there hath been ſuch a cuſtom, that if any ſurrender of any cuſtomary lands or tenements of the manor aforeſaid be made to the Lord or Lady of the ſaid manor, for the time being, out of the court of the ſaid manor, according to the cuſtom thereof, it ſhould be preſented by the homage of the court of the ſaid manor aforeſaid, at the firſt court of the ſaid manor next after ſuch ſurrender to be held at that manor; and that after ſuch preſentment, made in the manner aforeſaid, the firſt public proclamation ſhould be made in the ſame firſt court, that ſuch perſon who hath a right to be admitted to the tenements aforeſaid, ſo ſurrendered, ſhould appear at that court and pray to to be admitted to the cuſtomary tenements, comprized in ſuch ſurrender, according to the intent and purport thereof; and if ſuch perſon who hath a right to be admitted to the tenements aforeſaid, ſo ſurrendered, came not at the ſame firſt court, and prayed to be admitted nor was admitted to the tenements, with the appurtenances, mentioned in ſuch ſurrender as aforeſaid, then at the ſecond court of the ſaid manor, to be held next after ſuch ſurrender, another public proclamation ſhall be made, that ſuch perſon that hath

That within the manor there is a cuſtom that if any ſurrender be preſented at the next court that the firſt proclamation ſhall be that the perſon who hath a right ſhall come and pray to be admitted &c.

And if he will not, &c. then a ſecond and ſo a third.

a right to be admitted as aforeſaid, ſhould appear at that ſame court, and ſhould pray to be admitted to the cuſtomary tenements, according to the intent and purpoſe of the ſurrender aforeſaid; and if ſuch perſons who had a right to be admitted as aforeſaid, came not at ſuch ſecond court, and prayed to be admitted nor was admitted to the tenements, with the appurtenances, mentioned in ſuch ſurrender as aforeſaid, then at the third court of the ſaid manor, next after ſuch ſurrender held at the manor aforeſaid, there ſhould be another public proclamation made, that ſuch perſon who had a right to be admitted as aforeſaid, ſhould come at the ſame third court and pray to be admitted to the tenements mentioned in ſuch ſurrender; and if ſuch perſon came not at that court, and prayed to be admitted nor was admitted to the ſaid tenements, with the appurtenances, then the ſteward of the ſaid court, for the time being, commanded, and by the cuſtom of the manor aforeſaid therein uſed and approved of, for ſo long a time as there is no remembrance of any man to the contrary, hath uſed to command, the bailiff of the ſaid manor, for the time being, to ſeiſe ſuch tenements ſo ſurrendered into the hands of the Lord

And if he will not come upon the third proclamation, then the ſteward of the court is to command the bailiff to ſeiſe the premiſes to the uſe of the Lord.

or

or Lady of the ſaid manor, for the time being. And the ſaid jurors do upon their ſaid oath further declare, that the ſaid *Henry Warner* and *Elizabeth* in right of the ſaid *Elizabeth*, being ſeiſed of the tenements within written, with the appurtenances, wherein, *&c.* in the manner aforeſaid, the remainder thereof belonging to the ſaid *John Ballett* and his heirs, in the manner aforeſaid, they the ſaid *Henry Warner* and *Elizabeth* and *John Ballett*, before the within written time when, *&c.* that is to ſay, on the 6th day of *April*, in the thirty-fourth year of the reign of his late majeſty, ſurrendered out of court, according to the cuſtom of the manor aforeſaid, into the hands of the ſaid *Alice*, then lawfully being the Lady of the manor aforeſaid, the within written tenements, with the appurtenances, wherein, *&c.* to the uſe of one *Robert Freeman* and his heirs for ever; and that the ſaid *Robert Freeman* after the ſurrender made in the manner aforeſaid, and before any court of the ſaid manor was held after making the ſaid ſurrender (that is to ſay) on the 1ſt day of *Auguſt* in the thirty-fourth year of the reign of his ſaid late Majeſty, died, and that one *John Freeman* was and is the only ſon and heir of the ſaid *Robert Freeman*, and,

That the ſaid Henry Warner and Elizabeth and John Ballett the 6th April An. 34 Car. 2. ſurrendered out of court into the hands of the leſſor of plaintiff, ſhe being the lady of the manor.

To the uſe of Robert Freeman and his heirs.

That Robert Freeman died before any court, and John Freeman was his ſon and heir and within age.

and, as ſuch ſon and heir of the ſaid *Robert*, had a right to be admitted to the tenements aforeſaid, with the appurtenances, wherein, *&c.* according to the form and effect of the ſaid ſurrender, made in the manner aforeſaid. And the ſaid jurors do upon their ſaid oath further declare, that the ſaid *John Freeman* at the time of the death of the ſaid *Robert Freeman*, his father, was and now is within the age of twenty-one years; and that the ſaid *Robert Freeman* is dead, and the ſaid *John Freeman* being within the age of twenty one years, and he the ſaid *John Freeman* having a right to be admitted to the tenements aforeſaid, with the appurtenances, the ſaid ſurrender made by the ſaid *Henry Warner* and *Elizabeth* and *John Ballet* into the hands of the ſaid *Alice*, as aforeſaid, afterwards (that is to ſay) at the court of the manor aforeſaid, next after the ſaid ſurrender made as aforeſaid, held at that manor on the 5th day of *September*, in the 34th year of the reign of his ſaid late Majeſty, was duly, and according to the cuſtom of the manor aforeſaid, preſented by the homage of the ſame court, and immediately after ſuch preſentment of the ſaid ſurrender, made in the ſame court by the homage aforeſaid, the

That the ſurrender was preſented at the next court, the 5th of September 34 Car. 2.

That the 1ſt proclamation was made at that ſame court.

the firſt public proclamation was then made in the ſame court, that ſuch perſon who had a right to be admitted to the ſaid tenements aforeſaid, with the appurtenances, ſhould come at the ſame court there held as aforeſaid, and pray to be admitted to the ſaid tenements, ſurrendered as aforeſaid, and that he appeared not at that ſame court, nor was admitted to the ſaid tenements, whereupon afterwards at the ſecond court of the ſaid manor next after the ſaid ſurrender, made as aforeſaid, held at that manor on the 13th day of *June*, in the thirty-fifth year of the reign of his ſaid late majeſty, another public proclamation was then made in the ſame court, that ſuch perſons who had a right to be admitted to the ſaid tenements ſhould come at the ſame court there held as aforeſaid, and pray to be admitted to the ſaid tenements, ſurrendered as aforeſaid, and that no perſon came at that ſame court, nor was admitted to the ſaid tenements, with the appurtenances; whereupon afterwards at the third court of the manor aforeſaid, next after making the ſaid ſurrender as aforeſaid, held at that manor on the 23d day of *October*, in the ſaid thirty-fifth year of the reign of his ſaid late Majeſty, another public proclamation

And that no perſon came, &c.

The like at the ſecond court.

The like at the third court. Whereupon the premiſes were ſeiſed by the bailiffs for the uſe of the leſſor of the plaintiff.

mation was then made in the ſame court that ſuch perſon who had the right to be admitted to the ſaid tenements, ſurrendered as aforeſaid, ſhould come at that ſame court there held as aforeſaid, and pray to be admitted to the ſaid tenements, ſurrendered as aforeſaid, and that no perſon came at that ſame court, nor was admitted to the ſaid tenements, with the appurtenances; whereupon one *Thomas Clarke* then bailiff of the ſaid manor was commanded by the ſteward of the manor aforeſaid, that he ſhould ſeize the ſaid tenements, with the appurtenances, into the hands of the ſaid *Alice*, then Lady of the manor aforeſaid, which ſaid *Thomas Clarke* afterwards (that is to ſay) on the 1ſt day of *November* in the 35th year aforeſaid, entered into the ſaid tenements, with the appurtenances, by virtue of the ſaid mandate. And the ſaid jurors do upon their ſaid oath further declare, that the ſaid *Alice* was at the time when the ſaid ſurrender was made, and ever ſince hath been and now is, lady of the manor aforeſaid, and thereof legally ſeiſed, and that after the ſaid ſeveral proclamations and the ſeveral defaults made as aforeſaid, and before making the within written demiſe (that is to ſay) on the firſt day of

April,

April, in the firſt year of the reign of his ſaid preſent Majeſty within ſpecified, ſhe the ſaid *Alice* being Lady of the ſaid manor, and the ſaid *John Freeman* then and now being of the age of twenty-one years, ſhe the ſaid *Alice* entered into the tenements within ſpecified, with the appurtenances, wherein, *&c.* as forfeited to her for the reaſon aforeſaid, and was thereof ſeiſed as the law requires. "And they "find the leaſe, entry, and ouſter, and if "the defendant be guilty of the treſpaſs "and ejectment, then they find him ſo, "and if not, then they find him not "guilty."

And that ſhe entred for the forfeiture.

This precedent is in Lut. 765. *but the caſe reported in 3d* Modern 221. *and the judgment which was given for the defendant in the common pleas, was affirmed in the kings bench upon a writ of error. The ſingle queſtion was, whether this cuſtom did not ſo bind the infant as to work a forfeiture. The opinion of three judges againſt the chief juſtice was, that it did not bind infants; and the reaſons for their opinions appear to be, that as the rights of infants are much favoured in law, and their laches ſhall not be prejudicial to them as to entry or claim, upon a preſumption that they underſtand*

The Caſe

derſtand not their right, the ſeveral reaſons for the judges opinions are there at large, to which the reader is referred, to avoid prolixity.

Hunt v. Bourne and others, Hil. 5 W. & M. Roll. 763. That Thomas Andrews was ſeiſed in fee 14 Feb. 14 Ja. 1. and by indenture conveyed the premiſes.

DECLARE upon their oath, that *Thomas Andrews*, in the fourteenth year of the reign of his late Majeſty *James* the Firſt, late King of *England*, *&c.* was ſeiſed of the lands and tenements mentioned in the within written declaration, in his demeſne as of a fee, and being ſo ſeiſed thereof, he the ſaid *Thomas Andrews*, by a certain indenture bearing date on the fourteenth day of *February*, in the ſaid fourteenth year of the ſaid late King *James* the Firſt, executed between the ſaid *Thomas Andrews*, by the name of *Thomas Andrews*, of *King's Caple* in the county of *Hereford*, yeoman, of the one part, and *Toby Pavie*, of *King's Caple* aforeſaid, yeoman, and *Philip Andrews*, of *Sutton* in the ſaid county, yeoman, of the other part, for the conſiderations mentioned in the ſame indenture, gave, granted, enfeoffed and confirmed to the ſaid *Toby Pavie* and *Philip Andrews*, and their heirs, the ſaid lands and tenements to the ſeveral uſes declared and ſpecified

in

in the ſame indenture, (that is to ſay) to the uſe of the ſaid *Thomas Andrews*, and *Eleanor*, his wife, for the term of their natural lives, and the life of the longeſt liver of them, without impeachment of waſte during the life of the ſaid *Thomas Andrews*, and after their deceaſe then to the uſe of one *Mary Andrews*, mentioned in the ſaid indenture, daughter of the ſaid *Thomas Andrews*, and of the heirs of the body of the ſaid *Mary* begotten or to be begotten by one *John Gwillim* the younger, mentioned in the ſaid indenture, and for default of ſuch iſſue, then to the uſe of the heirs begotten on the body of the ſaid *Mary*, and for default of ſuch iſſue, then to the uſe of one *Elizabeth Tomkins*, another daughter of the ſaid *Thomas Andrews*, and the heirs begotten of the body of the ſaid *Elizabeth*, and for default of ſuch iſſue, then to the uſe of *William Tomkins*, eldeſt ſon of the ſaid *Elizabeth Tomkins*, and of the heirs begotten of the body of the ſaid *William Tomkins*, and for default of ſuch iſſue, then to the uſe of *John Tomkins*, ſecond ſon of the ſaid *Elizabeth*, and of the heirs of the body begotten of the body of the ſaid *John Tomkins*, and for default of ſuch iſſue, then to the uſe of the right heirs of the

To the uſe of himſelf and Eleanor, his wife, for life, remainder to Mary Andrews, his daughter, and the heirs of her body, begotten by one John Gwillim the younger, remainder to the ſaid Mary Andrews, the daughter, in general tail.

Remainder to Elizabeth Tomkins, another daughter, in general tail; remainder to William Tomkins, the eldeſt ſon of the ſaid Elizabeth, in general tail; remainder to John Tomkins, another ſon of the ſaid Elizabeth, in general tail; remainder to the right heirs of Thomas Andrews.

the ſaid *Thomas Andrews* for ever, as in the ſaid indenture it is more fully contained. And the ſaid jurors do upon their ſaid oath declare, that by virtue of the ſaid indenture, and alſo by force of the ſtatute for transferring uſes into poſſeſſion, publiſhed in the parliament of *Henry* the Eighth, late King of *England*, *&c.* held at *Weſtminſter* on the fourth day of *February*, in the twenty-ſeventh year of his reign, they the ſaid *Thomas Andrews*, and *Eleanor*, his wife, became ſeiſed of the ſaid lands and tenements mentioned in the ſaid declaration, in their demeſne as of a freehold, for the term of their natural lives, the remainder thereof as in the manner above limited, and that after making the ſaid indenture, the ſaid *John Gwillim* the younger married the ſaid *Mary Andrews*, and had iſſue begotten between them one *Thomas Gwillim*, their eldeſt ſon, and that afterwards, and before the ſaid twenty-ninth day of *May*, in the year of our Lord 1646, they the ſaid *Thomas Andrews*, and *Eleanor*, his wife, died, and that after their deceaſe the ſaid *John Gwillim* the younger, and *Mary*, his wife, entered into the lands and tenements above mentioned in the ſaid declara-

That J. Gwillim the younger married the ſaid M. A. and had iſſue T. G. that afterwards, and before 29 May, 1646, the ſaid T. A. and his wife died, and the ſaid J. G. and M. his wife entered.

claration, and were ſeiſed thereof in right of the ſaid *Mary*, in their demeſne as of a fee-tail (that is to ſay) to the ſaid *Mary*, and the heirs of her body begotten by the ſaid *John Gwillim* the younger, remainder thereof in the above manner limited, and being thus ſeiſed thereof, they the ſaid *John Gwillim*, and *Mary*, his wife, afterwards, and before the ſaid twenty-ninth day of *May*, in the year of our Lord 1646, died, and after their deceaſe the ſaid *Thomas Gwillim*, as ſon and heir of the ſaid *Mary*, begotten of her body by the ſaid *John Gwillim* the younger, entered into the lands and tenements, with the appurtenances, and was thereof ſeiſed in his demeſne as of a fee-tail, the remainder thereof in the manner above limited, and being ſo ſeiſed thereof, he the ſaid *Thomas Gwillim* had iſſue begotten of his body one *Thomas Gwillim*, his ſon. And the ſaid jurors do upon their ſaid oath further declare, that the ſaid meſſuage, lands and tenements above ſpecified in the ſaid declaration, and alſo divers other meſſuages, lands and tenements, within the ſaid pariſh of *King's Capel*, are held of the ſaid manor of *Wormlow*, in the ſaid county of *Hereford*, which ſaid manor now is, and for ſo long time

That afterwards, and before the ſaid 29th of May, J. G. and his wife died, whereby the ſaid T. G. their eldeſt ſon, entered, and had iſſue T. who entered, &c.

That the tenements are held of the manor of Wormlow, which is ancient demeſne.

time as there is no remembrance of any man to the contrary hath been, of ancient demeſne of our Sovereign Lord and Lady the King and Queen of *England*, and their predeceſſors, Kings of *England*; and that the ſaid tenements have been during all that time pleadable and impleaded in the court of the ſaid manor or hundred, by their Majeſty's inferior writ of right cloſe, before the ſteward, ſuitors and domeſmen of the ſaid manor and hundred, or their deputies or attornies, and not elſewhere nor otherwiſe, and by an ancient cuſtom of the ſaid manor and hundred, time out of mind herein uſed and approved of, the fines founded upon writs of right cloſe, of meſſuages, lands, meadows, paſtures, furze and heath, within and being held of the ſaid manor, or appertaining thereto, have been levied, and during the time aforeſaid have been uſed and accuſtomed to be levied, in the ſaid court of the manor aforeſaid, and that a certain fine produced in evidence to the ſaid jury was levied in the court of the right honourable the Lady *Elizabeth*, Counteſs of *Kent*, then lady of her manor or hundred of *Wormlow* aforeſaid, whereof, *&c.* held at *King's Caple*, within the manor or hundred aforeſaid, accord-

And pleadable by writ of right cloſe before the ſteward, &c. of the manor. That fines are levied in that court.

That 29 May, 1646, a fine ſur conceſſit was levied of the premiſes by Thomas Gwillim, the father, and his wife, according to the cuſtom, &c.

cording to the ſaid cuſtom time out of mind uſed and approved of within the ſaid manor, on the twenty-ninth day of *May*, in the twenty-ſecond year of the reign of his late Majeſty *Charles* the Firſt, King of *England*, *&c.* before *William Gardiner*, gentleman, then deputy to *Walter Kyrle*, Eſq; chief ſteward there, and *Toby Payne*, then attorney to the right honourable the Lord Viſcount *Scudamore*, and *Philip Roſe*, then attorney to Sir *Edward Powell*, Knight, and *Thomas Hopkin*, then attorney to *William Hoſkins*, gentleman, then ſuitors and domeſmen of the ſaid court, and others of his ſaid Majeſty's ſubjects then preſent there, between *William Nurſe*, *Sarah*, his wife, and *John Nurſe*, their ſon, plaintiffs, and the ſaid *Thomas Gwillim*, their father, and *Mabell*, his wife, deforcients of the ſaid meſſuages, lands and tenements, mentioned in the ſaid declaration, by which ſaid fine the ſaid *Thomas Gwillim*, the father, granted to the ſaid *William Nurſe*, and *Sarah*, his wife, and to *John Nurſe*, ſon of the ſaid *William* and *Sarah*, the lands and tenements aforeſaid above mentioned in the ſaid declaration, being held of the manor aforeſaid for the term of the lives of the ſaid *William Nurſe*, and *Sarah*,

Whereby T. G. the father, granted to W. N. and S. his wife, and J. N. their ſon, for their lives.

Sarah, his wife, and of *John Nurſe*, and of the life of the longer liver of either of them, thereby reſerving an annual rent of ſix pounds during the ſaid term, as it is more fully comprehended in the ſaid fine, the tenor of which fine follows in theſe words: " *Wormlow*, *ſſ.* This is a " final agreement, made in the court of " the right honourable the Lady *Eliza-* " *beth*, Counteſs of *Kent*, of her manor " or hundred of *Wormlow*, held at *King's* " *Caple*, within the manor or hundred " aforeſaid, on the twenty-ninth day of " *May*, in the twenty-ſecond year of the " reign of our Sovereign Lord *Charles*, " by the grace of God, King of *England*, " *Scotland*, *France*, and *Ireland*, defender " of the faith, *&c.* before *William Gar-* " *diner*, gentleman, deputy to *William* " *Kyrle*, Eſq; chief ſteward there, *Toby* " *Payne*, gentleman, attorney of the right " honourable Viſcount *Scudamore*, and " *Philip Roſe*, gentleman, attorney of " Sir *Edward Powell*, Knight, and *Tho-* " *mas Hopkin*, attorney of *William Hoſ-* " *kins*, gentleman, ſuitors and domeſmen " of the ſaid court, and others of his " ſaid Majeſty's faithful ſubjects then " preſent there, between *William Nurſe*, " and

Reſerving an annual rent of 6 l. The fine in hæc verba.

" and *Sarah*, his wife, and *John Nurſe*, " ſon of the ſaid *William* and *Sarah*, " plaintiffs, and *Thomas Gwillim*, and " *Mabell*, his wife, deforcients of one " meſſuage, one barn, one garden, one " orchard, ſixty acres of land, fifteen acres " of meadow, and two acres of paſture, " with the appurtenances, in *King's Ca-* " *ple*, within the juriſdiction of this court, " whereupon a plea of covenant had " been ſummoned between them in the " ſame court, according to the cuſtom " of the manor or hundred aforeſaid there " uſed and approved of, for ſo long a " time that there is no remembrance of " any man to the contrary." And the agreement is ſuch (that is to ſay) that the ſaid *Thomas* and *Mabell* have acknowledged the ſaid tenements, with the appurtenances, to be the right of the ſaid *William*, as thoſe which they the ſaid *William*, *Sarah*, and *John* have of the gift of the ſaid *Thomas*, and thoſe they have remiſed and quit-claimed from them the ſaid *Thomas* and *Mabell*, and the heirs of the ſaid *Thomas*, to the ſaid *William*, *Sarah*, and *John*, for and during the term of their lives, and the longer liver of them, yielding therefore yearly to the ſaid *Thomas* and his heirs, ſix pounds of law-

lawful money of *England*, upon the firſt day of *Auguſt* and the firſt day of *February*, by equal portions, and the ſaid *Thomas* and *Mabell* have granted, for themſelves and the heirs of the ſaid *Thomas*, that they will warrant the ſaid tenements, with the appurtenances, to the ſaid *William*, *Sarah*, and *John*, for and during the term of their lives, and the longeſt liver of either of them, againſt all men whatſoever; and for this acknowledgment, remiſſion, quit-claim, warranty, fine, and agreement, they the ſaid *William*, *Sarah*, and *John*, have given to the ſaid *Thomas* and *Mabell* one hundred forty-five pounds and ten ſhillings of ſterling money: but the ſaid jurors do upon their ſaid oath further declare, that the ſaid meſſuage, lands and tenements, mentioned in the ſaid fine, were not uſually demiſable at the time of levying the fine aforeſaid, and that the ſaid annual rent, reſerved by the ſaid fine as aforeſaid, was not the ancient rent of the ſaid tenements, by virtue of which ſaid fine they the ſaid *William Nurſe*, and *Sarah*, his wife, and *John Nurſe*, entered into the lands and tenements aforeſaid, and were ſeiſed thereof as the law requires: and being ſo ſeiſed thereof, he

That the premiſes at the time of the fine were not uſually demiſable, nor was the rent reſerved ancient rent. That the conuſees entered.

the

the ſaid *Thomas Gwillim*, the father, being ſeiſed of the reverſion of the meſſuage, lands and tenements aforeſaid, a certain other fine produced in evidence to the ſaid jurors, was levied in the ſaid court of the right honourable the Lady *Elizabeth*, counteſs of *Kent*, then lady of her ſaid manor or hundred of *Wormlow*, held at *Polſton*, in the pariſh of *King's Caple*, within the juriſdiction of that court, according to the cuſtom aforeſaid uſed and approved of within the ſaid manor during the whole time aforeſaid, on *Friday*, the ſecond day of *June*, in the twenty-fourth year of the reign of our ſaid late Sovereign Lord *Charles* the Firſt, late King of *England*, *&c.* before *William Gardiner*, gentleman, then deputy to *Walter Kyrle*, Eſq; then chief ſteward there, and *Toby Payne*, gentleman, attorney of the right honourable *John*, Viſcount *Scudamore*, *John Kidley*, gentleman, then attorney to *William Scudamore*, Eſq; and *Philip Reeſe*, gentleman, then attorney to Sir *Edward Powell*, Knight and Baronet, then ſuitors and domeſmen of the ſaid court, and others of his ſaid Majeſty's ſubjects, then preſent there, between one *Thomas Marrett*, plaintiff, and the ſaid *Thomas Gwillim*, and *Mabell*, his wife, deforcients

That T. G. the father, being ſeiſed of the reverſion, he and his wife levied another fine of the premiſes, 2 Jan. 24 Car. 2. to T. Marrett and his heirs.

of the ſaid meſſuages, lands and tenements, mentioned in the ſaid declaration, by which laſt mentioned fine the ſaid *Thomas Gwillim* and *Mabell* granted to the ſaid *Thomas Marrett*, and his heirs, the ſaid meſſuages, lands and tenements mentioned in the within written declaration, as in the ſaid fine it is more fully expreſſed, the tenor of which ſaid fine follows in theſe words: "*Wormlow*, *ſſ.* This "is a final agreement, made in the court "of the right honourable the Lady *Eli-* "*zabeth*, Counteſs of *Kent*, of her ma- "nor or hundred of *Wormlow*, held at "*Polſton*, in the pariſh of *King's Caple*, "within the juriſdiction of this court, on "*Friday* the ſecond day of *June*, in the "twenty-fourth year of the reign of our "Sovereign Lord *Charles*, by the grace "of God, King of *England*, *Scotland*, "*France*, and *Ireland*, defender of the "faith, *&c.* before *William Gardiner*, "gentleman, deputy to *Walter Kyrle*, "Eſq; chief ſteward there, and *Toby* "*Payne*, gentleman, attorney to the right "honourable *John*, Viſcount *Scudamore*, "*John Kidley*, gentleman, attorney to "*William Scudamore*, Eſq; and *Philip* "*Reeſe*, gentleman, attorney to Sir *Ed-* "*ward Powell*, Knight and Baronet, "ſuit-

The fine in hæc verba.

" ſuitors and domeſmen of the ſaid court,
" and others of his ſaid Majeſty's ſub-
" jects, then preſent there, between *Tho-*
" *mas Marrett*, gentleman, plaintiff, and
" *John Gwillim*, and *Mabell*, his wife,
" deforcients, of one meſſuage, one gar-
" den, one orchard, ſixty acres of land,
" two acres of meadow, and fifteen acres
" of paſture, with the appurtenances, in
" *King's Caple*, within the juriſdiction of
" this court; whereupon a plea of co-
" venant was ſummoned between them
" in the ſame court, according to the
" court of the manor or hundred afore-
" ſaid, there uſed and approved of for
" ſo long a time as there is no remem-
" brance of any man to the contrary.
" And the agreement is ſuch, that the
" ſaid *Thomas Gwillim* and *Mabell* have
" acknowledged the ſaid tenements, with
" the appurtenances, to be the right of
" the ſaid *Thomas Marrett*, as thoſe which
" the ſaid *Thomas Marrett* hath of the
" gift of the ſaid *Thomas Gwillim* and
" *Mabell*, and thoſe they have remiſed
" and quit-claimed from themſelves, and
" their heirs for ever. And further the
" ſaid *Thomas Gwillim* and *Mabell* have
" granted, for themſelves and the heirs
" of the ſaid *Thomas Gwillim*, that they

" will warrant the ſaid tenements, with " the appurtenances, to the ſaid *Thomas* " *Marrett* and his heirs for ever; and " for this acknowledgment, remiſſion, " quit-claim, warranty, fine, and agree- " ment, the ſaid *Thomas Marrett* hath " given to the ſaid *Thomas Gwillim* and " *Mabell* one hundred pounds ſterling, in " teſtimony of which matter, as well the " ſaid deputy ſteward as the ſuitors and " domeſmen aforeſaid have ſet their ſeals " to theſe preſents, dated the day and " year above mentioned." And the ſaid jurors do upon their ſaid oath further declare, that the fine laſt mentioned, thus levied, was ſo levied to the uſe of the ſaid *Thomas Gwillim*, the father, his heirs and aſſigns, for ever, by virtue of which ſaid fine, and alſo by force of the ſaid act for transferring uſes into poſſeſſion, the ſaid *Thomas Gwillim* was ſeiſed of the ſaid tenements ſpecified in the within written declaration as the law requires; and being ſo ſeiſed thereof, by a certain indenture produced in evidence to the ſaid jurors, bearing date on the firſt day of *November*, in the twenty-fourth year of the reign of his ſaid late Majeſty *Charles* the Firſt, late King of *England*, then executed between the ſaid *Tho-*

That the laſt fine was levied to the uſe of T. G. the father. That T. G. the father, 1ſt Nov. 24 Car. 1. by an indenture inrolled, conveyed the premiſes to T. Payne and his heirs.

Thomas Gwillym the father, by the name of *Thomas Gwillym*, of *Kings Caple* in the county of *Hereford*, Gentleman, of the one part, and *Thomas Payne* of *Kings Caple* aforeſaid, yeoman, of the other part; he the ſaid *Thomas Gwillym* the father, for the conſiderations mentioned in the ſame indenture, enfeoffed, bargained, and ſold to the ſaid *Thomas Payne* and his heirs, the ſaid meſſuage, lands, and tenements mentioned in the ſaid indenture. And the ſaid jurors do upon their ſaid oath further declare, that the ſaid laſt mentioned indenture was enrolled of record in the county of *Hereford*, among the records of the ſame county, according to the direction of the ſtatute in ſuch caſe made and provided, before *Thomas Baſkerville*, Eſq; then one of the juſtices aſſigned to keep the peace in and for the ſaid county of *Hereford*, and *Miles Hill*, Gentleman, then clerk of the peace of the ſaid county, within ſix months then next following after making the ſaid indenture (that is to ſay) on the 15th day of *March*, in the year of our Lord, according to the computation of the Engliſh Church, 1648, by virtue of which ſaid bargain and ſale, and alſo by force of the ſaid act for transferring uſes into poſſeſſion,

The enrolment of the indenture before juſtices of peace.

ſion, the ſaid *Thomas Payne* was ſeiſed of the ſaid reverſion of the tenements, mentioned in the ſaid declaration, as of a fee and right as the law requires. And the ſaid jurors do upon their ſaid oath further declare, that the lands and tenements aforeſaid mentioned in the declaration aforeſaid, and the ſaid lands and tenements in the ſaid laſt mentioned fine, are the ſame and not different or ſeparate lands and tenements. And they do further declare, that by a releaſe produced in evidence to the ſaid jury, bearing date on the 19th day of *November* in the year of our Lord 1649, he the ſaid *Thomas Gwillym* for the conſiderations therein mentioned, gave, granted, remiſed, releaſed, and quit-claimed to the ſaid *Thomas Payne* (being ſeiſed of the reverſion of the ſaid tenements in the manner aforeſaid) and to his heirs, all the title, intereſt, term, and demand whatſoever of the ſaid *Thomas Gwillym* in the lands and tenements mentioned in the ſaid releaſe, being the lands and tenements mentioned in the ſaid declaration, as in the ſame releaſe it is more fully expreſſed, the tenor of which releaſe follows in theſe words: To all chriſtian people to whom this preſent writing ſhall come, I *Thomas Gwillym* of *Kings*

That Thomas Gwillym the father, 19th November, 1649, releaſed all his right to the ſaid Thomas Payne (being ſeiſed &c) and to his heirs.

The releaſe in hæc verba.

Kings Caple in the county of *Hereford*, Gentleman, ſend greeting in the Lord God everlaſting, whereas I *Thomas Gwillym* by my indenture under my hand and ſeal, bearing date the 1ſt day of *November*, in the four and twentieth year of the reign of our Sovereign Lord *Charles* late King of *England*, *&c.* acknowledged and inrolled before *Thomas Baſkerville*, Eſq; then one of the juſtices of the peace and cuſtos rotulorum of the ſaid county of *Hereford*, and *Miles Hill*, Gentleman, then clerk of the peace for the ſaid county of *Hereford*, for and in conſideration of the ſum of twenty pounds of lawful money of *England*, therein mentioned, did give, grant, bargain, and ſell unto *Thomas Payne* of *Kings Caple* aforeſaid, and his heirs, all that capital meſſuage or tenement, wherein one *William Nurſe* then and yet dwelleth, lying and being in *Penalte*, within the ſaid pariſh of *Kings Caple*, all the glebe-land, meadow, paſture, and wood thereunto belonging, uſed and occupied and then and yet in the tenure of the ſaid *William Nurſe* and one *Thomas Payne*, to have and to hold the capital meſſuage or tenement, and all and ſingular other the premiſes, with the appurtenances, in the ſaid recited indenture mentioned, unto

the ſaid *Thomas Payne* his heirs and aſſigns for ever, to the ſole only and proper uſe and behoof of the ſaid *Thomas Payne* his heirs and aſſigns for ever; now know ye that I the ſaid *Thomas Gwillym*, for and in conſideration of a further ſum of fourſcore pounds of lawful money of *England*, to the ſaid *Thomas Gwillym* by the ſaid *Thomas Payne* well and truly paid, have granted, remiſed, releaſed, and quit-claimed, and by theſe preſents do grant, remiſe, releaſe, and for ever quit-claim, unto the ſaid *Thomas Payne* and his heirs, all my eſtate, right, title, intereſt, term, and demand whatſoever, which I now have or by any means hereafter ſhall or may have of in or to the ſaid capital meſſuage or tenement, lands, meadows, leaſows, woods, and premiſes, with the appurtenances, in *Penalte* and *Kings Caple* aforeſaid, ſo that neither I the ſaid *Thomas Gwillym* nor my heirs ſhall have, claim, or demand any eſtate, right, title, or intereſt, of in or to the ſaid capital meſſuage, lands, and premiſes, with the appurtenances, or any part thereof by me formerly granted to the ſaid *William Nurſe*, *Sarah* his wife, and *John Nurſe* their ſon, for the term of their lives, but ſhall from henceforth be utterly and for ever excluded by theſe preſents; in witneſs

witneſs whereof I the ſaid *Thomas Gwillym* have hereunto put my hand and ſeal, the 19th day of *November*, 1641. And the ſaid jurors do upon their ſaid oath further declare, that afterwards (namely) on the 20th day of *June*, in the year of our Lord 1663, the ſaid *Thomas Gwillym* the father died, and the ſaid *Thomas Gwillym* the younger, being then of the full age of twenty-one years, was ſon and heir of the ſaid *Thomas Gwillym* the father; and that the ſaid *Thomas Gwillym* the younger had iſſue begotten of his body the ſaid *Richard Gwillym* the ſon, the leſſor of the premiſes; and that the ſaid *Thomas Gwillym*, the father of the ſaid *Richard*, afterwards, and before the time of the demiſe in the ſaid declaration above ſuppoſed to have been made, died, and that the ſaid *Richard Gwillym* is ſon and heir to the ſaid *Thomas Gwillym* his father, and nephew and heir to the ſaid *Mary Andrews*, lawfully iſſuing from her body. And the ſaid jurors do upon their ſaid oath further declare, that the ſaid *Thomas Payne* being ſeiſed, in the manner aforeſaid, of the ſaid reverſion of the tenements ſpecified in the ſaid declaration, he the ſaid *Thomas Payne* afterwards, and before the time of the demiſe ſuppoſed in

That Thomas Gwillym the father died 20th June, 1663.

That the ſaid T. G. the younger (within age) was his ſon and heir, and had iſſue the leſſor of the premiſes.

That the leſſor, &c. was alſo heir of the body of the ſaid Mary Andrews.

That the ſaid T. Payne died 20th September, 1661, and his reverſion deſcended to John Payne his ſon and heir.

in the declaration aforeſaid (namely) on the 20th day of *September*, in the year of our Lord 1661, died, being thus ſeiſed thereof, after whoſe deceaſe the ſaid reverſion of the ſame tenements deſcended to one *John Payne*, as ſon and heir of the ſaid *Thomas Payne*, whereby the ſaid *John Payne* became ſeiſed of the ſaid reverſion of thoſe tenements, as of a fee and right as the law requires; and being ſo ſeiſed thereof, he the ſaid *John Payne* afterwards, and before the time of the demiſe ſuppoſed in the declaration (namely) on the 28th day of *December*, in the year of our Lord 1680, died, without iſſue ſpringing from his body, being ſeiſed of ſuch his eſtate in the manner aforeſaid, after whoſe deceaſe the ſaid reverſion of the tenements aforeſaid deſcended to the ſaid *Margaret* wife of the ſaid *Edward*, to *Mary* the wife of the ſaid *Andrew*, and to *Mary Meyrick*, as coheirs of the ſaid *John Payne*, whereby the ſaid *Edward* and *Margaret* his wife in right of the ſaid *Margaret*, and the ſaid *Andrew* and *Mary* his wife in right of the ſaid *Mary*, and the ſaid *Mary Meyrick*, were ſeiſed of the ſaid reverſion of the tenements aforeſaid, as of a fee and right, as the law requires; and that the ſaid *Thomas Payne* during

That 28th of December, 1680, John died without iſſue, and the reverſion deſcended to the defendant's wives, as coheirs of the ſaid John.

his life, and after making the ſaid indenture of bargain and ſale enrolled as aforeſaid, and after his deceaſe the ſaid *John Payne* in his life-time, and after his deceaſe the ſaid *Edward* and *Margaret Andrews*, and *Mary Meyrick*, reſpectively received, and quietly enjoyed, the ſaid annual rent of ſix pounds, reſerved as aforeſaid, during the continuance of the ſaid grant and demiſe made for three lives as aforeſaid. And the ſaid jurors do upon their ſaid oath further declare, that the ſaid *Mary Nurſe* ſurvived the ſaid *William Nurſe* and *John Nurſe*, who died ſeiſed of the ſaid tenements, ſpecified in the ſaid declaration, and that ſhe the ſaid *Sarah* died on the 17th day of *September*, in the year of our Lord 1693, ſeiſed of the ſaid tenements, ſpecified in the ſaid declaration as aforeſaid, and that, after the deceaſe of the ſaid *Sarah*, the ſaid *Edward Bourne* and *Margaret* in right of the ſaid *Margaret*, the ſaid *Andrew* and *Mary* in right of the ſaid *Mary*, and the ſaid *Mary Meyrick*, entred into the ſaid meſſuage, lands, and tenements, mentioned in the declara- aforeſaid, and were ſeiſed thereof as the law requires; and that afterwards, and before the time of the demiſe above mentioned in the ſaid declaration, the ſaid *Richard*

That Thomas Payne and his heirs received the annual rent, &c.

That the ſurvivor of the three leſſees died 17th September, 1693.

That thereupon the defendants entred and the leſſor (being within age) entred upon them &c.

Richard Gwillym entred in the ſaid meſſuage, lands, and tenements, above mentioned in the within written declaration, and was ſeiſed thereof as the law requires, he the ſaid *Richard* then and yet being within the age of twenty-one years. They further find the leaſe, entry, and ouſter, and if, *&c.* with the general concluſion.

Concluſion.

The Caſe, Lutt. 779.

Upon the argument of this caſe, which was in the kings bench, upon a writ of error, the following points were unanimouſly reſolved.

Firſt, that a fine may be levied of lands in ancient demeſne, in the court of ancient demeſne, notwithſtanding the ſtatute of 18 *Ed.* 1. called *modus levandi* fines, which mentions that fines ſhall be levied in the common pleas, and not elſewhere, for that ſtatute only takes away the validity of fines levied in burrough courts, or other inferior courts, which was the miſchief intended to be prevented by that ſtatute, and doth not extend to courts of antient demeſne; for it would be unreaſonable that they ſhould hinder the levying fines in the common pleas (as they might do by a writ of diſceit) and yet they

they could not levy fines in their courts of ancient demeſne.

Secondly, it was reſolved that ſuch fines levied in antient demeſne, made a diſcontinuance, and hath all effects of a fine levied in the common pleas, but that it is not a bar, which is only by the ſtatute of the 4. of *H.* 7.

Thirdly, that the fine found in this caſe is good, notwithſtanding that the cuſtom is found to levy fines founded upon a writ of right cloſe, and the fine levied is in an action of covenant between them, *&c.* for it is found to be according to the cuſtom of the court; and there is not any inconſiſtency between a writ of right cloſe and this action of covenant, for the action of covenant is not perſonal in that caſe, but real, that the party perform his covenant of ſuch and ſuch lands, and not for damages for the breach of the covenant.

Fourthly, that the firſt fine found made a diſcontinuance only for lives, and not a diſcontinuance in fee, notwithſtanding that the conuzors in the firſt part of the fine acknowledged the right to be the conuzees, which was objected implied a fee ſimple,

ſimple, and notwithſtanding the warranty in the ſecond fine.

Fifthly, the leſſor of the plaintiff is not barred by the ſtat. of 21 *Ja.* 1. of limitations, although that twenty years were paſſed after the right of action, *viz.* a formedon accrued, for although that he was barred of that action after twenty years were paſſed, yet he hath a title of entry only after the diſcontinuance, for three lives determined; and he ſhall have twenty years to enter after his title of entry accrued to him, which in this caſe was by the determination of the leaſe for three lives, and that was within twenty years before the action brought.

Judgment for plaintiff for part, and plaintiff to be amerced for the reſidue.

AFTERWARDS, *&c.* therefore it is adjudged that the ſaid plaintiff do recover, againſt the ſaid defendant, his term aforeſaid of and in the two hundred and ſixty acres of wood, with the appurtenances, (foraſmuch as the ſaid defendant is by the jurors aforeſaid above found to be guilty of the treſpaſs and ejectment aforeſaid) yet unexpired, and his damages aforeſaid aſſeſſed by the ſaid jurors to forty-one ſhillings, *&c.* and alſo ſix ſhillings

lings, awarded by this court to the ſaid plaintiff at this requeſt, *&c.* which ſaid damages in the whole do amount to eight pounds twelve ſhillings, and be the ſaid defendant taken, *&c.* and be the ſaid plaintiff amerced for his falſe complaint againſt the ſaid defendant for the reſidue of the treſpaſs and ejectment aforeſaid, whereof the ſaid defendant is above acquitted by the jurors aforeſaid, is, and the ſaid defendant may go hence thereof for ever diſmiſſed, *&c.* And hereupon the ſaid plaintiff prayeth a writ of our Sovereign Lord the King to be directed to the ſheriff of the county, to cauſe him to have poſſeſſion of his term aforeſaid yet unexpired of and in the ſaid two hundred and ſixty acres of wood, with the appurtenances, and it is granted to him, returnable here in eight days of St. *Hilary*, *&c.*

When the defendant relinquiſheth his plea, and confeſſeth the action, and a writ of inquiry is awarded for the plaintiff.

AT which day came here the parties aforeſaid, *&c.* (as in a common action) by a ſpecial warrant appointed for that purpoſe, and hereupon the defendant doth relinquiſh his averment aforeſaid, *&c.* (as in others) nor but that he is guilty of the treſpaſs and ejectment aforeſaid,

ſaid, as the ſaid plaintiff hath above complained againſt him, therefore it is adjudged, that the ſaid plaintiff do recover againſt the ſaid defendant his term aforeſaid of and in the tenements aforeſaid, with the appurtenances, yet unexpired, and his damages occaſioned by the treſpaſs and ejectment aforeſaid, and becauſe it is unknown what damages, *&c.* under the ſeal, *&c.* and the ſeals, *&c.*

C. B. Judgment for plaintiff, where the term expired before the judgment given.

AT which day the jurors, *&c.* afterwards, *&c.* and becauſe the juſtices here will adviſe themſelves, *&c. &c.* At which day came here as well the ſaid *R.* as the ſaid *L.* by their attornies aforeſaid, and hereupon the premiſes being ſeen, and by the juſtices here fully underſtood, for that it ſufficiently appeareth here to this court, that the ſaid term of three years is fully paſt, it is conſidered that the ſaid *R.* do recover againſt the ſaid *L.* his damages aforeſaid, aſſeſſed by the ſaid jurors, to forty ſhillings, and alſo, *&c.* which ſaid damages in the whole do amount to ſeven pounds, and be the ſaid *L.* taken, *&c.*

AND

AND the ſaid *John*, by *B. H.* his attorney, comes and defends the force and injury, when, &c. and ſays nothing in bar or preclusion of the action aforeſaid of him the ſaid *Lawrence*, whereby the ſame *Lawrence* remains againſt the ſaid *John* therein undefended, &c. therefore it is conſidered that the ſaid *Lawrence* recover againſt the ſaid *John* his term yet to come of and in the rectory and tenements aforeſaid, with the appurtenances. It is alſo conſidered, that the ſaid *Lawrence* ought to recover his damages againſt the ſaid *John*, by reaſon of the premiſes; and upon this the ſaid *Lawrence* freely here in court remits to the ſaid *John* all and all manner of damages, coſts and charges, which he the ſame *Lawrence* hath ſuſtained by reaſon of the premiſes, or which in this behalf may be adjudged, and all and all manner of judgments and executions to be had of or for the ſame, therefore the ſaid *John* from thoſe damages, coſts and charges may be quiet, &c. Whereupon the ſheriff is commanded, without delay, to cauſe the ſaid *Lawrence* to have his poſſeſſion of his term aforeſaid yet to come of and in the rectory and tenements aforeſaid, with the appurtenan-

Lucas v. Legawe. Nil dicit in ejectment, judgment to recover the term, and damages.

The damages remitted.

Writ of poſſeſſion awarded.

ces, and to certify how that precept ſhall be executed to the Lady the Queen from the day of *Eaſter* in fifteen days, wherever, *&c.* The ſame day is given to the ſaid *Lawrence, &c.*

Nil dicit. And the ſaid *Lawrence*, by *B. H.* his attorney, comes and defends the force and injury, when, *&c.* and ſays nothing in bar or preclusion of the action of the ſaid *John*, but hath made default, whereby the ſame *John* remains againſt the ſaid

Otherwiſe. *Lawrence* undefended, *&c.* Therefore it is conſidered, that the ſaid *John* ought to recover his term aforeſaid yet to come of and in the tenements aforeſaid, with the appurtenances, and his damages, by reaſon of the premiſes, againſt the ſame *Lawrence*. Whereupon the ſheriff is commanded to cauſe, without delay, the ſaid *John* to have his poſſeſſion of his term aforeſaid yet to come of and in the tenements aforeſaid, with the appurtenances, and to certify how that precept ſhall be executed to the ſaid Lord the King at *Weſtminſter*, on —— day next after —— The ſame day, *&c.*

AND

AND the ſaid *C.* by *J. P.* his attorney, comes and defends the force and injury, when and ſo forth, and ſays nothing in bar or preclusion of the action of the ſaid *A. B.* but made default, by which the ſaid *A.* remains undefended upon that occaſion againſt the ſaid *C.* for which it is conſidered, that the ſaid *A.* recover againſt the ſaid *C.* his term yet to come of and in the ſaid tenements, with the appurtenances; and upon this the ſaid *A.* freely here in court remits to the ſaid *C.* all ſuch damages, coſts and charges as he the ſaid *A.* has ſuſtained by occaſion of the premiſes, or as can be adjudged to him in this behalf, therefore the ſaid *C.* may be free from theſe damages, coſts and charges, *&c.* and upon this the ſaid *A.* prays the writ of our Lord the King to be directed to the ſheriff of the county aforeſaid, to cauſe him to have poſſeſſion of his ſaid term yet to come of and in the ſaid tenements, with the appurtenances, and it is granted him, returnable, *&c.*

Judgment in ejectment by original againſt the caſual ejector by nil dicit.

Judgment by original by non informatus.

AND the ſaid *C. D.* by *S. S.* his attorney, comes and defends the force and injury, when, *&c.* and upon this the ſaid *A.* prays that the ſaid *C.* may anſwer his ſaid declaration, upon which the ſaid attorney of the ſaid *C.* ſays, that he is not informed by the ſaid *C.* of any anſwer to be given for the ſaid *C.* to the ſaid *A.* in the ſaid plaint, and he ſays not any other thing thereupon in bar or preclusion of the ſaid action of the ſaid *A.* by which the ſaid *A.* remains undefended upon that occaſion againſt the ſaid *C.* for which it is conſidered, that the ſaid *A.* recover againſt the ſaid *C.* the poſſeſſion of his ſaid term yet to come of and in the ſaid tenements, with the appurtenances, and his damages by occaſion of the ſaid treſpaſs and ejectment; but becauſe it is unknown what damages the ſaid *A.* has ſuſtained by occaſion of the ſaid treſpaſs and ejectment, it is commanded to the ſheriff, that, by the oath of twelve good and lawful men of his bailiwick, he diligently enquire what damages the ſaid *A.* has ſuſtained, as well by occaſion of the ſaid treſpaſs and ejectment, as for his coſts and charges by his ſuit in this behalf expended, and that the inquiſition which, *&c.*

Inquiry awarded. Note, error in ejectment lies before inquiry executed.

&c. the ſheriff do make appear to our Lord the King from the day, *&c.* (the return) whereſoever, *&c.* under his ſeal, *&c.* and the ſeals, *&c.* The ſame day is given to the ſaid *A.* *&c.* and upon this the ſaid *A.* prays the writ of our Lord the King to be directed to the ſheriff of the county aforeſaid, to cauſe him to have poſſeſſion of his ſaid term yet to come of and in the ſaid tenements, with the appurtenances, and it is granted to him, returnable, *&c.*

Judgment by nil dicit againſt the caſual ejector, with an imparlance to the next term after the declaration.

AND now at this day, to wit, —— next after ——— (the firſt day of the next term) to which day the ſaid *C. D.* had leave to imparl to the ſaid bill, and then to anſwer, *&c.* before our Lord the King at *Weſtminſter*, came the ſaid *A. B.* by his attorney aforeſaid. And the ſaid *A. B.* prays that the ſaid *C. D.* may anſwer to his ſaid declaration; and the ſaid *C. D.* although at the ſame day ſolemnly required, comes not, neither does he ſay any thing in bar or preclusion of the ſaid action of the ſaid *A. B.* whereby the ſaid *A. B.* remains thereof undefended againſt the ſaid *C. D.* *&c.* It is therefore conſidered, that the ſaid *A. B.* do recover

againſt the ſaid *C. D.* his term yet to come of and in the ſaid tenements, with the appurtenances, and alſo his damages by occaſion of the ſaid treſpaſs and ejectment; and upon this the ſaid *A. B.* freely here in court remits to the ſaid *C. D.* as well all ſuch damages, coſts and charges, as may be adjudged to the ſaid *A. B.* in this behalf, as all judgments and executions for the ſaid damages, coſts and charges. Therefore let the ſaid *C. D.* be diſcharged from the ſaid damages, coſts and charges. And the ſaid *A. B.* craves the writ of our Lord the King to be directed to the ſheriff of ——— to cauſe him to have poſſeſſion of his ſaid term yet to come of and in the ſaid tenements, with the appurtenances, and it is granted to him, returnable before our Lord the King at *Weſtminſter*, on ——— next after ———. The ſame day is given to the ſaid *A. B.* there, *&c.*

Judgment for plaintiff after verdict.

THEREFORE it is conſidered, that the ſaid *John* do recover againſt the ſaid *James* his term yet to come of and in the ſaid tenements, with the appurtenances, and the ſaid damages aforeſaid, aſſeſſed by the ſaid jury in form aforeſaid, and

and alſo ſixty pounds for his coſts, charges and expences, awarded to the ſaid *John* with his aſſent, by the court of his preſent Majeſty here, by way of increaſe, which ſaid damages in the whole amount to 10*l.* 10*s.* and be the ſaid *James* amerced, &c.

Judgment by default in a ſcire facias in ejectment on a double demiſe.

BUT made default: therefore it is conſidered, that the ſaid *W. W.* have his poſſeſſion of the ſaid term yet to come of and in the ſeveral tenements aforeſaid, with their appurtenances, and alſo his execution againſt the ſaid *J.* for his damages, according to the force, form and effect of the ſaid recovery by the default of the ſaid *J.* &c.

One of the defendants found not guilty as to part, and the others not guilty as to all.

BE the ſaid *L.* taken, &c. and be the ſaid plaintiff amerced for his falſe complaint againſt the ſaid *T.* for the reſidue of the treſpaſs and ejectment aforeſaid, and againſt *C. C. R.* of the whole treſpaſs and ejectment aforeſaid, whereof the ſaid *T. C.* and *R.* are by the ſaid jurors wholly acquitted, and the ſaid *T. C.* and *R.* may go hence thereof for ever diſmiſſed, &c. and hereupon, &c.

Writ of poſſeſſion.

GEORGE the Second, &c. to the ſheriff of ——— greeting Whereas ——— lately in our court, before us at *Weſtminſter*, by bill, without our writ, and by the judgment of the ſame court, recovered againſt ——— his term yet to come of and in one meſſuage, &c. with the appurtenances, ſituate, lying and being in ——— your county, which ——— on the ——— day of ——— in the ——— year of our reign, demiſed to the ſaid ——— for a term of years not yet expired, to wit, from the ——— day of ——— then laſt paſt to the full end and term of five years thence next enſuing, and fully to be complete and ended, by virtue of which demiſe the ſame ——— entered upon the ſame tenements, with the appurtenances, and was thereof poſſeſſed until the ſaid ——— afterwards, to wit, on the ſame ——— day of ——— in the ——— year aforeſaid, with force and arms entered into the ſaid tenements, with the appurtenances, and him the ſaid ——— from his farm aforeſaid, the ſaid term then and there being expired, ejected, drove out and removed, and him the ſaid ——— hath withheld from his poſſeſſion thereof, and ſtill doth withhold, whereof

If by original, ſay by our writ.

the ſaid —— is convicted, as appears to us of record, therefore we command you, that without delay you cauſe the ſaid —— to have his poſſeſſion of his term aforeſaid yet to come of and in the tenements aforeſaid, with the appurtenances, and in what manner you ſhall have executed this our writ, do you make appear to us at *Weſtminſter*, on, *&c.* and have you there this writ. Witneſs, *&c.*

If by original, obſerve to make it returnable in a general return, &c.

GEORGE the Second, by the grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* to the ſheriff of *Oxford*, greeting. Whereas *Richard J.* lately in our court before us at *Weſtminſter*, by our writ (if by original) (if by bill) then by a bill without our writ, and by the judgment of the ſame court, recovered againſt *T. B.* late of *London*, his term (yet unexpired) of and in ſix meſſuages, two hundred acres of land, forty acres of meadow, one hundred acres of paſture, and two hundred acres of woodland, with the appurtenances, in *S.* and in the pariſh of *Stanton Harcourt* in your county, and alſo of and in the rectory of *Stanton Harcourt*, with the appurtenances, in your county, which

K. B. A writ of habere facias poſſeſſionem, or a writ to cauſe the plaintiff to have his poſſeſſion of the tenements in queſtion, with a fieri facias for the coſts.

which one *W. M.* on the ſeventh day of *April*, in the ſecond year of our reign, demiſed to the ſaid *Richard* for a term of years which is not yet expired (that is to ſay) from the firſt day of the ſame month of *April*, to the full end and term of ten years then next following, fully to be complete and ended, by virtue of which ſaid demiſe the ſaid *Richard* entered into the ſaid rectory and tenements, with the appurtenances, and was thereof poſſeſſed until the ſaid *Thomas* afterwards (that is to ſay) on the ſame ſeventh day of *April*, in the ſaid ſecond year of our reign, with force and arms entered into the ſaid rectory and tenements, with the appurtenances, in and upon the poſſeſſion of the ſaid *Richard* thereof, and ejected, drove out, and removed the ſaid *Richard* from his ſaid farm, for the ſaid term then and yet unexpired, and did and ſtill doth withhold the poſſeſſion of the ſame from the ſaid *Richard*, whereof the ſaid *Thomas* is convicted, as appears to us of record; and foraſmuch as it is adjudged in our ſame court before us, that the ſaid *Richard* have an execution upon his ſaid judgment againſt the ſaid *Thomas*, according to the force, form and effect of

his

his ſaid recovery, therefore we command you, that without delay you cauſe the ſaid *Richard* to have his poſſeſſion of his ſaid term (yet unexpired) of and in the ſaid tenements, with the appurtenances; and in what manner you ſhall execute this precept, do you make appear to us if by original, in three weeks from the day of *St. Martin*, wherever we ſhall then be in *England*; we likewiſe command you, that you cauſe to be made, ten pounds and ſix pence, of the goods and chattels of the ſaid *T.* in your bailiwick, which were awarded to the ſaid *R.* in our ſame court, for his damages, which he ſuſtained by reaſon of the ſaid treſpaſs and ejectment, and have you thoſe monies before us at the ſame time, wherever we ſhall then be in *England*, to render to the ſaid *R.* for his damages aforeſaid, whereof the ſaid *T.* is convicted, you returning to us this our writ, witneſs *Robert* Lord *Raymond*, the 23d day of *October*, in the 6th year of our reign.

Continuances upon an habere facias poſſeſſionem.

THEREFORE the ſheriff is commanded that without delay he cauſe the ſaid *T.* to have his poſſeſſion of his ſaid term, of and in the ſaid meſſuage or tene-

tenement, with the appurtenances. And as well, &c. to our Sovereign Lord the King at *Weſtminſter*, he cauſe to be (ſuch a day the day of the return) but becauſe the court of our ſaid Sovereign Lord the King know not what damages the ſaid plaintiff hath ſuſtained, by reaſon of the premiſes, therefore the ſaid ſheriff is commanded that, by the oath of twelve honeſt and lawful men, of his bailiwick, he diligently enquire what damages the ſaid plaintiff hath ſuſtained, as well by reaſon of the premiſes, as for his expences and coſts, by him laid out about his ſuit in that behalf, and the enquiry which, &c. to our ſaid Sovereign Lord the King (the day of the return) under the ſeal, &c. and the ſeals, &c. he return together with the writ of our ſaid Sovereign Lord the King to him directed. The ſame day is given to the ſaid plaintiff there, &c. at which day, &c. came the ſaid plaintiff by his attorney aforeſaid, and the ſheriff did not return the writ thereof.

As to the writ of poſſeſſion, the ſheriff returns that nothing was

AT which day comes here the ſaid *T. P.* by his attorney aforeſaid; and as to the ſaid writ, to cauſe the ſaid *T.* to have

have poſſeſſion, &c. the ſheriff did nothing thereupon nor returned the writ; therefore, as before, let another writ be made thereof, directed to him in the manner aforeſaid, &c. returnable, &c. and as to the aforeſaid writ to inquire of the damages, &c. the ſheriff (*viz.*) *A. R.* doth now return here a certain inquiſition (as in others) and for thoſe coſts and charges to ſix ſhillings, and becauſe the juſtices will adviſe themſelves of and upon the premiſes, until &c. before they give their judgment, &c. at which day here cometh the ſaid *T.* by his attorney aforeſaid, and hereupon the premiſes being ſeen, and by the ſaid juſtices here fully underſtood, it is adjudged &c. as in the former; and as to the ſaid writ, to cauſe the ſaid *T.* to have poſſeſſion, &c. the ſheriff on, &c. had done nothing thereupon, nor returned his writ; therefore (as before) let another writ thereof be made in the manner aforeſaid, returnable here, &c.

done thereupon, and as to the writ of enquiry for damages, the ſame executed and another writ of poſſeſſion awarded.

AT which day here cometh the ſaid plaintiff by his attorney aforeſaid, and as to the writ to cauſe the ſaid plaintiff to have poſſeſſion, &c. the ſheriff (that is to ſay) *G. S.* Eſq; now returns, that he, by

The ſheriff returneth that he hath delivered poſſeſſion, and an inquiſition for the dama-

ges and the costs, will advise before they pronounce judgment for the damages.

by virtue of the writ aforesaid, to him directed, did on the 24th day of *November* last past, cause the said plaintiff to have his possession of his term aforesaid, yet unexpired, of and in the tenements aforesaid, with the appurtenances, according to the purport of the writ aforesaid. And as to the said writ to inquire of the damages, *&c.* the said sheriff doth also return here a certain inquisition (as in others until) for those costs and charges at four pence, and because the justices here will advise of and upon the premises, as to that particular whereof the said writ of inquiry of damages did issue, before they pronounce their judgment thereupon, a day is given to the said plaintiff as in others, *&c.*

Writ of possession upon a judgment in ejectment in the common pleas, removed into the king's bench, by writ of error. and there the judgment affirmed.

GEORGE the second by the grace of God, *&c.* to the sheriff of *Middlesex*, greeting: Whereas *Richard Williamson* hath lately in our court, before Sir *George Treby*, Knight, and his brethren, our justices of our court of common pleas, by our writ, and by the judgment of the same court, recovered against *William Norton*, late of *London*, yeoman, his term yet unexpired of and in eight messuages,

ſuages, with the appurtenances, in the pariſhes of *St. Martin's in the Fields*, and *St. Clement's Danes*, in your county, which *Chriſtopher Cratford*, gentleman, on the 1ſt day of *May*, in the third year of our reign, demiſed to the ſaid *Richard*, to have and to hold to him and his aſſigns, from the 25th day of *December* then laſt paſt, to the full end and term of ſeven years, from thence next enſuing, and fully to be compleat and ended; and whereupon the ſaid *William* afterwards, that is to ſay, on the 21ſt day of *January*, in the third year aforeſaid, with force and arms entred into the tenements aforeſaid, with the appurtenances, and expelled and amoved the ſaid *R.* from his poſſeſſion thereof, and ejected him from his ſaid farm therein, whereof the ſaid *William* is convicted by inſpection of the ſaid records and proceedings thereof, which we lately cauſed to be brought into our court before us, by virtue of our writ for correcting errors, proſecuted by the ſaid *William*, of and upon the ſaid premiſes, now remaining in our court before us, it appeareth to us on record, whereupon the ſaid judgment is before us affirmed, as it likewiſe appeareth to us on record; and therefore we command you, that without delay you

cauſe

cauſe the ſaid *Richard* to have his poſſeſſion of his term aforeſaid, yet unexpired, of and in the tenements aforeſaid; and in what manner you ſhall execute this our writ, do you make appear to us on, *&c.* whereſoever we ſhall then be in *England*, returning to us this our writ, witneſs *Robert* Lord *Raymond*, at *Weſtminſter*, on the 28th day of *November*, in the fifth year of our reign.

Error aſſigned in parliament.

AFTERWARDS, (to wit) on the — day of ——— in the —— year of the reign of our Sovereign Lord *George* the ſecond, now King of *Great Britain*, and ſo forth, before the King himſelf, in his parliament, the ſaid *C. D.* comes by ——— his attorney, and ſays that in the ſaid record and proceſs, as alſo in giving the ſaid judgment, there is manifeſt error, in this (to wit) that the ſaid declaration, and the matter contained therein, are not ſufficient in law to maintain the action of the ſaid *A. B.* againſt the ſaid *C. D.* therefore: in that there is manifeſt error; alſo in this, that by the ſaid record it appears that the ſaid judgment in form aforeſaid was given for the ſaid *A. B.* againſt the ſaid *C. D.* where, by the law of the land, the

the ſaid judgment ought to have been given for the ſaid *C. D.* againſt the ſaid *A. B.* and the ſaid *C. D.* prays, and ſo forth.

Another.

AFTERWARDS (to wit) on the — day of ——— in the —— year of the reign of our Sovereign Lord *George* the ſecond, now King of *Great Britain*, and ſo forth, before our ſaid Lord the King and great men and peers aſſembled in this preſent parliament, at *Weſtminſter*, in the county of *Middleſex*, the ſaid *C. D.* comes by —— ——— his attorney and ſays, that there is manifeſt error in the ſaid record and proceſs, alſo in giving and affirming the ſaid judgment, mentioned in the ſaid record, in this (to wit) that by the ſaid record it appears that the ſaid judgment given by the ſaid court of our Lord the King, before the King himſelf, at *Weſtminſter*, was given for the ſaid *A. B.* againſt the ſaid *C. D.* where by the law of the land the ſaid judgment ought to have been given for the ſaid *C. D.* againſt the ſaid *A. B.* and therefore in that there is manifeſt error; there is alſo error in affirming the ſaid judgment, becauſe he ſays that the ſaid judgment was affirmed in the court of our Lord the King of exchequer

chamber, at *Weſtminſter*, before the juſtices of the common bench, and the barons of the ſaid exchequer, where no ſuch affirmance of the ſaid judgment ought to have been thereupon given, but the ſaid judgment, by the law of the land, ought to have been reverſed, and therefore in that there is manifeſt error; and the ſaid *C. D.* prays that the ſaid judgment for the ſaid errors, and others in the ſaid record and proceſs, may be reverſed, annulled, and entirely ſet aſide, and that he may be reſtored to all that he has loſt, by occaſion of the ſaid judgment and affirmance, and that the ſaid *A. B.* may rejoin to the ſaid errors, and ſo forth.

Error aſſigned on a judgment and affirmance of that judgment in Ireland.

AFTERWARDS (to wit) on —— next after ——— in this ſame term, before our Lord the King at *Weſtminſter*, the ſaid *C. D.* and *E. F.* come by *R. S.* attorney, and ſay, that in the ſaid record and proceſs, and alſo in giving the ſaid judgment, and alſo in affirming the ſame, there is a manifeſt error, in this (to wit) that by the record of the ſaid judgment and affirmance of the ſame, it appears that the ſaid judgment, in form aforeſaid, was given and affirmed for the ſaid

ſaid *A. B.* againſt the ſaid *C.* and *E.* where, by the law of the land of the ſaid kingdom of *Ireland*, the ſaid judgment ought to have been given for the ſaid *C.* and *E.* againſt the ſaid *A.* therefore in that there is manifeſt error, and this they ſaid *C.* and *E.* are ready to verify, wherefore they pray that the ſaid judgment and affirmance thereof, for the ſaid error and other errors in the ſaid record and proceſs, may be reverſed, annulled, and entirely ſet aſide, that the ſaid *C.* and *E.* may be reſtored to all that they have loſt, by occaſion of the ſaid judgment and affirmance, *&c.* and that the ſaid *A.* may rejoin to the ſaid errors, *&c.*

Error aſſigned in B. R. on a judgment given in C. B.

AFTERWARDS (to wit) on ——— next after the ——— before our Lord the King, at *Weſtminſter*, the ſaid *C. D.* comes by ——— his attorney, and ſays, that in the ſaid record and proceſs, alſo in giving the ſaid judgment, there is manifeſt error, in this (to wit) that the ſaid declaration in the ſaid record mentioned, and upon which the ſaid judgment is given in form aforeſaid, and the matter therein contained, is not ſufficient in law to maintain the ſaid judgment thereupon given in form aforeſaid, and ſo the

ſaid judgment thereupon, given in form aforeſaid, is erroneous and void in law, and therefore in that there is manifeſt error; there is alſo manifeſt error in this, that where by the ſaid record it appears that the ſaid judgment, in form aforeſaid given, was given for the aforeſaid *A. B.* againſt the ſaid *C. D.* where, by the law of the land, judgment in the ſaid plea ought to have been given for the ſaid *C. D.* againſt the ſaid *A. B.* and therefore in that there is manifeſt error; and he prays that the ſaid judgment for theſe errors, and others in the ſaid record and proceſs, may be reverſed and annulled and entirely ſet aſide, and that the ſaid *A.* may be reſtored to all that he has loſt, by occaſion of the ſaid judgment, and that the ſaid *A. B.* may rejoin to the ſaid errors, *&c.* and the ſaid *A. B.* comes by his attorney, and ſays that there is no error either in the ſaid record and proceſs, or giving the ſaid judgment, and prays that the court of our Lord the King now here may proceed to examine as well the ſaid record and proceſs, as the ſaid matters above aſſigned for errors, by the ſaid *C. D.* and that the ſaid judgment may be in all things affirmed.

AND

AND the ſaid *C.* Counteſs dowager of —— by —— her attorney, comes and ſays, that in the ſaid record and proceſs, as alſo in giving the ſaid judgment, there is manifeſt error, in this (to wit) that the ſaid declaration and the matter therein contained, are not ſufficient in law to maintain the action of the ſaid *E.* and *G.* thereupon againſt her the ſaid Counteſs, therefore in that there is manifeſt error; there is alſo error in this, that by the ſaid record it appears that the ſaid judgment, given in the manner and form aforeſaid, was given for the ſaid *E.* and *G* againſt the ſaid Counteſs, in the plea aforeſaid, where, by the law of the land, the ſaid judgment ought to have been given for the ſaid Counteſs, againſt the ſaid *E.* and *G.* and therefore in that there is manifeit error. And the ſaid Counteſs further ſays, that there is alſo error in this (to wit) that there is not any warrant of attorney affiled of record, in the ſaid court of common bench, between the ſaid parties of the plea aforeſaid, to warrant the ſaid —— to be attorney for the ſaid *E.* and *G.* againſt the ſaid Counteſs, in the plea aforeſaid, therefore in that alſo there is manifeſt error; where-

Error aſſigned on judgment in C. B.

fore the ſaid Counteſs prays the writ of our Lord the King of *certiorari*, to the chief juſtice of our ſaid Lord the King of the bench to be directed, &c. and it is granted to her &c. whereby it is commanded to *William* Lord *Mansfield* chief juſtice of the bench aforeſaid, that he ſearch the rolls and other memorandums of the warrants of attorney, of the county of *Middleſex*, of *Eaſter* term, in the —— year of the reign of our ſaid Lord the King, being in his cuſtody on record, and that he, without delay, certify to our ſaid Lord the King, whereſoever, &c. what he ſhall thereupon find in the ſaid rolls and memorandums, together with the ſaid writ of our ſaid Lord the King, to him thereupon directed, &c. which ſaid chief juſtice of the bench aforeſaid, anſwered to our ſaid Lord the King, that the execution of the ſaid writ appeared in a certain ſchedule annexed to the ſaid writ, in which ſaid ſchedule is contained the title of the rolls, of the warrants of attorney, filed of *Eaſter* term aforeſaid, in the ſaid writ ſpecified, being in the cuſtody of the ſaid chief juſtice on record, and the record of a certain warrant of attorney, between the parties aforeſaid, of the plea aforeſaid, in the ſame form in which the ſaid warrant of

of attorney is entered on record on the ſaid rolls, which ſaid title and warrant of attorney, follow in theſe words: The rolls of attornies received before *William* Lord *Mansfield*, chief juſtice of our Lord the King of the bench, and his companions, of *Eaſter* term, in the —— year of the reign of our Sovereign Lord *George* the ſecond, King of *Great Britain*, *France*, and *Ireland*, defender of the faith *&c.*.

Middleſex (to wit) *E. F.* Eſq; and *G.* his wife, executrix of the laſt will and teſtament of Sir ——— Knight, put in their place ——— their attorney, againſt *C.* Counteſs Dowager of *Plymouth*, executrix of the laſt will and teſtament of *Charles* Earl of ——— of a plea of debt, which ſaid writ is affiled among the records without a day, *&c.* and upon this the ſaid *E.* and *G.* by ——— their attorney, come freely here into court, and the ſaid *C.* Counteſs Dowager of —— as before, ſays that in the ſaid record and proceſs, as alſo in giving the judgment aforeſaid, there is manifeſt error, by alledging the errors aforeſaid, by her in form aforeſaid alledged, and prays that the ſaid judgment for thoſe errors, and others in the ſaid record and proceſs, may be re-

verſed, annulled, and entirely ſet aſide, and that ſhe may be reſtored to all that ſhe has loſt, by occaſion of the ſaid judgment, &c. and that the ſaid *E.* and *G.* may rejoin to the ſaid errors, &c. and that the court of our ſaid Lord the King, here may proceed to the examination, as well of the ſaid record and proceſs, as of the aforeſaid matters above aſſigned for error, &c. and the ſaid *E.* and *G.* ſay that there is no error either in the ſaid record and proceſs, or in giving the ſaid judgment, and they likewiſe pray that the court of our ſaid Lord the King may proceed to the examination, as well of the ſaid record and proceſs, as of the matters aforeſaid above aſſigned for error, and that the ſaid judgment may be in all things affirmed, &c. and becauſe the court of our ſaid Lord the King now here is not yet adviſed what judgment to give thereupon, a day is given to the ſaid parties, that they be before our Lord the King, from the day of *St. Michael* in three weeks then next enſuing, whereſoever, &c. to hear their judgment thereon, becauſe the court of our ſaid Lord the King now here is not yet adviſed thereof, at which day before our Lord the King at *Weſtminſter*, the ſaid parties come by their attorneys

attorneys aforesaid; but because the court of our said Lord the King now here is not yet advised what judgment to give of and concerning the premises, a day is given to the said parties, that they be before our Lord the King on the octave of *St. Hilary*, wheresoever, *&c.* to hear their judgment thereon, because the court of our said Lord the King now here is not yet advised thereof, at which day before our Lord the King at *Westminster*, the said parties come by their attornies aforesaid; but because the court of our said Lord the King now here is not yet advised what judgment to give of and concerning the premises, a day is given to the said parties, that they be before our Lord the King, in fifteen days of *Easter*, wheresoever, *&c.* because the court of our said Lord the King now here is not yet advised thereof, at which day, before our Lord the King at *Westminster*, the said parties come by their attorneys aforesaid upon which, as well the said record and process and judgment thereupon given, as the said causes and matters above for error assigned, being reviewed, and by the court of our said Lord the King now here fully understood, and diligently examined, for that it appears to the court of

Judgment reversed.

of our ſaid Lord the King now here that there is manifeſt error in the ſaid record and proceſs, alſo in giving the ſaid judgment; it is conſidered that the ſaid judgment for the ſaid errors, and others in the ſaid record and proceſs be reverſed, annulled, and entirely ſet aſide, and that the ſaid *C.* Counteſs Dowager of —— be reſtored to all that ſhe has loſt by occaſion of the ſaid judgment, *&c.*

Coote v. Lynch, Mich. 8 W. 3. Roll 200.
A writ of error upon a bill of exceptions upon a verdict and judgment, in the common pleas in Ireland, removed into the king's bench there, and affirmed, and from thence removed to the king's bench in England, and there affirmed, and afterwards removed into the houſe of Lords.

" *WILLIAM* the third, by the " grace of God, King of *England*, " *Scotland*, *France*, and *Ireland*, defender " of the faith, to our truſty and well be- " loved counſellor Sir *Richard Payne*, " Knight, our chief juſtice aſſigned to " hold pleas before us in our kingdom of " *Ireland*, greeting. Becauſe in a record " and proceedings, and alſo in giving " judgment of a plaint which was levied " in our court of common pleas, in our " kingdom of *Ireland*, before you and " your brethren, then our juſtices of the " ſame court, by our writ, between *John* " *Lynch*, Gentleman, and *Richard Coote*, " Eſq; of a plea of treſpaſs and ejectment, " done to the ſaid *John*, by him the ſaid " *Richard* (which record and proceedings

" with

" with the cauſe of the intervening error,
" we have cauſed to be brought before us
" in our kingdom of *Ireland*, and the
" judgment thereupon is affirmed before
" us in our kingdom of *Ireland*, and now
" remaining before us in our ſaid king-
" dom of *Ireland)* manifeſt error inter-
" vened, to the great damage of the ſaid
" *Richard*, as we have received informa-
" tion from his complaint. We willing
" the error, if any, be in a due manner
" corrected, and full and ſpeedy juſtice
" done to the ſaid parties in this particu-
" lar. We command you, that if judg-
" ment be thereupon given and affirmed,
" then do you certify under your ſeal the
" record and proceedings aforeſaid, diſ-
" tinctly and plainly, together with all
" things relating thereto, and this writ,
" ſo that we may have them on the oc-
" taves of the purification of the Bleſſed
" Virgin *Mary*, wherever we ſhall then
" be in *England*, that by inſpecting the
" record and proceedings aforeſaid, we
" may cauſe further to be done therein
" what of right ought to be done for cor-
" recting the error therein, and do you
" make it known to the ſaid *John*, that
" he be there then to proceed in the
" plaint aforeſaid, and further to do and

" re-

" receive that which our court ſhall ad-
" judge in the premiſes. Witneſs our-
" ſelf at *Weſtminſter*, on the eighteenth
" day of *December*, in the ſeventh year of
" our reign. LAYTON.

Allowed, RICHARD PAYNE.

The return of the writ of error.

THE record and proceedings of the plaint, whereof mention is made, I certify to our Sovereign Lord the King, whereſoever, *&c.* at the day and place within contained in the record to this writ annexed, and I have made it known to the within named *John Lynch*, that he be there at that time to proceed in the plaint aforeſaid, as I am commanded to do.

So anſwereth RICHARD PAYNE.

Placita.

PLEAS before our Sovereign Lord the King at the King's court of *Trinity* term, in the ſeventh year of the reign of our Sovereign Lord *William* the Third, King of *England*, *France*, and *Ireland*, Defender of the Faith. Witneſs Sir *Richard Payne*, Knight.

SAVAGE.

"OUR

A writ of error to impower the Chief Juſtice of Ireland to examine the record and proceedings there.

" OUR Sovereign Lord the King " hath ſent to his truſty and well " beloved counſellor Sir *Richard Payne*, " Knight, his writ cloſe, in theſe words, " (that is to ſay) *William* the Third, by " the grace of God, King of *England*, " *Scotland*, *France*, and *Ireland*, Defender " of the Faith, *&c.* to our truſty and " beloved counſellor Sir *Richard Payne*, " Knight, greeting. Becauſe in the re- " cord and proceedings, and alſo in giv- " ing judgment in a plaint which was " before you and your brethren, our juſ- " tices of the Common Bench of the " kingdom of *Ireland*, by our writ, be- " tween *John Lynch*, plaintiff, and *Ri- " chard Coote*, Eſq; defendant, in a plea " of treſpaſs and ejectment, manifeſt er- " ror intervened (as it is ſaid) to the " great damage of the ſaid *Richard*, as " we have received information from his " complaint; we, willing the error, if " any there is, be in a due manner cor- " rected, and full and ſpeedy juſtice done " to the parties aforeſaid in this particu- " lar, we command you, that if judg- " ment hath been thereupon given, then " ſend you, under your ſeal, diſtinctly " and plainly, the record and proceedings

" afore-

" aforeſaid, together with all things touch-
" ing the ſame, and this writ, ſo that
" we may have them before us on the
" octaves of the purification of the Bleſſed
" Virgin *Mary*, wherever we ſhall then
" be in *Ireland*, that, inſpecting the re-
" cord and proceedings aforeſaid, we may
" cauſe further to be done for correct-
" ing the errors therein what of right,
" and according to the cuſtoms of our
" kingdom of *Ireland*, ought to be done.
" Witneſs our truſty and well beloved
" counſellor Lord *Henry*, Baron *Capell*, of
" *Tewkeſbury*, Sir *Cyrill Wych*, Knight,
" and *William Duncombe*, Eſq; our juſ-
" tices, and general governors of our
" kingdom of *Ireland*, at the King's
" courts, on the firſt day of *February*,
" in the ſeventh year of our reign."

CARR *and* CARR.

The return of the writ of error.

BY virtue of this writ, to me directed, I humbly certify to our Sovereign Lord the King the record and proceedings of the plaint, whereof mention is within made, together with all things touching the ſame, as this writ doth direct and require.

RICHARD PAYNE.

PLEAS

PLEAS at the King's courts, before Sir *Richard Payne*, Knight, and his brethren, juſtices of our Sovereign Lord and Lady *William* and *Mary*, King and Queen of *England*, *Scotland*, *France*, and *Ireland*, Defenders of the Faith, of their bench of the kingdom of *Ireland*, of *Hilary* term, in the fifth year of their reign. Placita.

WALKER.

RICHARD Coote, Eſq; was attached to anſwer *John Lynch*, gentleman, of a plea, wherefore with force and arms he broke and entered into the caſtle, manor and vill of *Gormanſtowne*, and two hundred meſſuages, two hundred cottages, two hundred gardens, one hundred orchards, three wind-mills, three fulling-mills, one thouſand acres of land, one thouſand acres of meadow, one thouſand acres of paſture, one thouſand acres of furze and heath, with the appurtenances, in the vills and land of *Gormanſtowne*, *Carrowſtone*, *Richardſtowne*, *Boltray*, *Logdeory*, *Balloy*, *Stamulni*, and *Caddellſtowne*, all and ſingular which premiſes lie in the barony of *Duleeke*, and county aforeſaid, *Jenico Preſton*, gentleman, commonly called

The declaration in ejectment in the Common Pleas in Ireland of a caſtle, manor, &c.

ed *Jenico*, Viſcount *Gormanſtowne*, demiſed to the ſaid plaintiff, *John Lynch*, for a term which is not yet paſt, and ejected the ſaid *John Lynch* from his farm aforeſaid, for his term aforeſaid therein not yet expired, and did him other wrongs, to the great damage, *&c.* and againſt the peace, *&c.* And whereupon the ſaid *John Lynch*, by *Michael Hall*, his attorney, complains, that whereas the ſaid *Jenico Preſton*, on the firſt day of *May*, in the year of our Lord 1693, at *Gormanſtowne*, in the county aforeſaid, demiſed and to farm let to the ſaid *John Lynch*, the caſtle, manor and vill of *Gormanſtowne*, and two hundred meſſuages, two hundred cottages, two hundred gardens, one hundred orchards, three wind-mills, three fulling-mills, one thouſand acres of land, one thouſand acres of meadow, one thouſand acres of paſture, and one thouſand acres of furze and heath, with the appurtenances, in the vills and land of *Gormanſtowne*, *Carrowſtowne*, *Richardſtowne*, *Boltray*, *Leogderoy*, *Balloy*, *Stamulni*, and *Caddellſtowne*, all and ſingular which premiſes lie in the barony of *Duleeke*, and county aforeſaid, to have and to hold all and ſingular the demiſed premiſes to the

ſaid

ſaid *John Lynch*, his executors, adminiſtrators and aſſigns, for the term of twenty-one years thence next following, by virtue of which ſaid demiſe the ſaid *John Lynch*, on the ſecond day of the month of *May* aforeſaid, in the year of our Lord 1693, entered into the ſaid demiſed premiſes, with the appurtenances, and was poſſeſſed thereof, and being ſo poſſeſſed thereof, he the ſaid *R. C.* on the third day of *May*, in the year aforeſaid, with force and arms entered into the ſaid demiſed premiſes, in and upon the poſſeſſion thereof, of the ſaid *John Lynch*, and with force and arms ejected, expelled, and removed the ſaid *John* from his farm aforeſaid (his term aforeſaid therein being unexpired) and did and now doth withhold the ſaid *John* from his farm aforeſaid, being ſo expelled therefrom, and then and there did him other injuries, againſt the peace of our Sovereign Lord and Lady the now King and Queen, to the great damage of the ſaid *John*; whereupon he declares he is injured and endamaged to the damage of four thouſand pounds ſterling, and therefore he brings his ſuit, *&c.*

Not guilty. And the ſaid *R.* by *R. P.* his attorney, comes and defends the force and injury, when, *&c.* and pleads that he is in no wiſe guilty of the premiſes above charged upon him, in ſuch manner and form as the ſaid *John* complains againſt him, and thereof he puts himſelf upon the country, and the ſaid *John* doth likewiſe the ſame; therefore the ſheriff is commanded, that he cauſe to come here, in fifteen days from *Eaſter*, twelve, by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* the ſame day is given to the ſaid parties to be here, *&c.*

The jurata at bar. Afterwards, the proceſs being thereupon continued between the parties aforeſaid, the jury are thereupon reſpited in the ſaid action here unto this day (that is to ſay) in fifteen days from the day of St. *Hilary* then next following, before which day our ſaid Sovereign Lady *Mary*, late Queen of *England*, departed this life, after whoſe deceaſe (that is to ſay) on the fifteenth day of St. *Hilary*, as well the ſaid *J. L.* gentleman, as the ſaid *R. C.* Eſq; by their attornies aforeſaid, appear, and the jury thereupon impanelled being called

called likewiſe, appeared, who being elected, tried, and ſworn to declare the truth of the premiſes, do upon their ſaid oath declare, that the ſaid *R. C.* is not guilty of the treſpaſs and ejectment aforeſaid, in ſuch manner and form as the ſaid *J.* declares againſt him, and they do aſſeſs the damages of the ſaid *John*, occaſioned by the treſpaſs and ejectment aforeſaid, beſides his expences and coſts, laid out by him about his ſuit in this cauſe, to twelve pence ſterling, and for thoſe expences and coſts to ſix pence; therefore it is adjudged, that the ſaid *J. L.* gentleman, do recover againſt the ſaid *R. C.* his term aforeſaid yet to come of and in the ſaid premiſes, with the appurtenances, and his damages aforeſaid, aſſeſſed by the ſaid jury to eighteen pence, in the manner aforeſaid, and alſo thirty-ſix pounds ſix ſhillings and nine pence, adjudged by this court to the ſaid *J. L.* with his conſent, for his expences and coſts aforeſaid, by way of increaſe, which ſaid damages in the whole amount to thirty-ſix pounds eight ſhillings and three pence; and be the ſaid *R. C. &c.* taken, *&c.*

A full jury at bar.

Verdict for the plaintiff.

Judgment.

Nonproſs after two ſcire facias's in error on ejectment.

AND afterwards, to wit, on *Wedneſday* next after three weeks from the day of the *Holy Trinity*, in this ſame term, before our Lord the King at *Weſtminſter*, the ſaid *C. D.* comes in his proper perſon, and ſays, that execution of the ſaid judgment ſtill remains to be made to him, therefore he prays the writ of our Lord the King to be directed to the ſheriff of the ſaid county of ——— to warn the ſaid *G.* to be before our Lord the King, whereſoever, *&c.* to ſhew if any thing ſhe has or knows to ſay for herſelf, why the ſaid *C.* ought not to have his execution thereof againſt her as well of the poſſeſſion of the ſaid term yet to come of and in the ſaid tenements, with the appurtenances, as of his damages, coſts and charges, according to the force, form and effect of the ſaid recovery, and it is granted to him, *&c.* by which it is commanded to the ſheriff of ——— that by good and lawful men of his bailiwick he make known to the ſaid *G.* that ſhe be before our Lord the King from the day of ——— whereſoever, *&c.* to ſhew in form aforeſaid if, *&c.* and further, *&c.* The ſame day is given to the ſaid *C. &c.* at which day, before our Lord the King

First ſcire facias.

at

at *Weſtminſter*, the ſaid *C.* comes in his proper perſon, and the ſheriff of the ſaid county of ——— to wit, *A. B.* Eſq; return, that the ſaid *G.* has nothing in his bailiwick by which he can make known to her, nor is ſhe found in the ſame, and ſhe does not come, therefore, as before, it is commanded to the ſheriff of ——— that, by good and lawful men of his bailiwick, he make known to the ſaid *G.* that ſhe be before our Lord the King on the ——— whereſoever, *&c.* to ſhew in form aforeſaid if, *&c.* and further, *&c.* The ſame day is given to the ſaid *C. &c.* At which day, before our Lord the King at *Weſtminſter*, the ſaid *C.* comes in his proper perſon, and the ſheriff of the ſaid county of ——— to wit, the ſaid *A. B.* Eſq; likewiſe returns, that the ſaid *G.* has nothing in his bailiwick by which he can make known to her, nor is ſhe found in the ſame, and the ſaid *G.* although on the fourth day of the plea ſolemnly required, came not, but made default, and upon this the ſaid *C.* ſays that the ſaid *G.* hath not yet aſſigned error or errors in the ſaid record and proceedings. Therefore a day is given to the ſaid parties before our Lord the King at *Weſtminſter*, until *Wedneſday*

Ret. nihil.

Alias ſcire facias.

Nihil ret.

Day given to aſſign errors.

next after, &c. to wit, to the ſaid *G.* to aſſign error or errors in the ſaid record and proceedings, &c. At which day, before our Lord the King at *Weſtminſter*, the ſaid *C.* comes in his proper perſon, and the ſaid *G.* at that day ſolemnly demanded, came not, but likewiſe made default, nor has ſhe further proſecuted the ſaid writ of error againſt the ſaid *C.* It is therefore conſidered, that the ſaid *G.* be in mercy, and that the ſaid *C.* have therefore his execution againſt the ſaid *G.* as well of the poſſeſſion of the ſaid term yet to come of and in the ſaid tenements, with the appurtenances, as his damages, coſts and charges, according to the force, form and effect of the ſaid recovery, &c. And it is further conſidered, that the ſaid *C.* recover againſt the ſaid *G.* ——— pounds, adjudged to the ſaid *C.* by the court of our Lord the King now here, according to the form of the ſtatute, &c. for his damages, coſts and charges, which he ſuſtained by occaſion of the delaying the execution of the ſaid judgment, by pretence of proſecuting the ſaid writ of error, and that the ſaid *C.* likewiſe have thereupon execution, &c.

Plaintiff in error makes default.

Coſts.

FINIS.

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to the reſidue, that the premiſes are copyhold, held of the manor of *B.* whereof Dame *C.* and *B.* are ſeiſed in fee—Grant by copy to *A. H.* in fee, who had iſſue four ſons and two daughters, and ſurrendered to his wife for life, and after to his three younger ſons and two daughters, in fee, equally to be divided, who were admitted, and all of them except *A.* died—Who being ſole ſeiſed by ſurvivorſhip, took to huſband *J. N.* and had iſſue one of the defendants, who on the death of his father and mother entred and was ſeiſed, on whom the plaintiff entred, and he and the other defendant as his ſervant re-entred as, *&c.*—*Repl.* as to three fifth parts—Admits they are copyhold, and ſurrender and uſes—Cuſtom to ſurrender out of court—*W. H.* ſurrendered to the uſe of his will, and thereby deviſed theſe three parts to the plaintiff's leſſor—The preſentment of the ſurrender, and of the death of *W. H.*—The admiſſion of the deviſees to the three fifths, who demiſed them to the plaintiff—The like plea to the other fifth part. 171—192

Plea—Not guilty—The award of the *venire*—Award of *niſi prius*—*Poſtea*—

Tales

Tales awarded—As to two parts of the manor, and as to two third parts of the premiſes, Not guilty, as to the other third part, the ſpecial verdict—that the 1ſt of *December*, in the 38th of *Elizabeth*, *P. Bathurſt* was ſeiſed in fee, and that he had iſſue *Edward* his ſon and heir apparent—That *P.* on the 7th of *December*, 40 *Eliz.* executed an indenture between him of the one part, and the ſaid *Edward* and others, of the other part—The indenture by which the ſaid *P.* for the preferment of his ſon *Edward*, granted, *&c.* to *Edward*, *&c.* the premiſes in the declaration—*Habendum* to them and their heirs—To the uſe of himſelf for life, the remainder to ſuch perſons as he ſhould appoint by will, *&c.* for ſeven years, and for want of ſuch appointment immediately after his deceaſe, to the uſe of his executors, *&c.* for ſeven years, for the payment of his debts and legacies, and to perform his will—Remainder to the uſe of *Edward* his ſon for life—Remainder to his firſt ſon in tail male—Remainder to ſecond, third, fourth and fifth ſons—Remainder to the right heirs of *Paul*—That *Paul Bathurſt* died 6th of *December*, 42 *Eliz.*—That *Edward* his

his ſon and heir entred and was ſeiſed —That he had iſſue *Thomas* his eldeſt ſon, and *Edward*, *William*, and *Robert*— That *Edward* the father died ſeiſed 1ſt *May*, 1630—That *Thomas* his eldeſt ſon entred and was ſeiſed—That *Mich.* 7 *Car.* 1. *Thomas* ſuffered a recovery— The recovery—Wherein *Edward Howſe* was vouched—The plea of the vouchee —Imparlance—Judgment—Writ of ſeiſin—Return—That *T. B.* 25th *February*, 8 *Car* 1. executed an indenture between him of the one part, and *Walter Roberts* and *Henry Criſp*, of the other part—The indenture, in which it is recited, that the ſaid *J. B.* was ſeiſed in fee, and that a marriage was intended between him and *E. Hooper*, he by ſame indenture, for a jointure for ſaid *Elizabeth*, covenanted with the truſtees to ſtand ſeiſed to the uſe of himſelf and the ſaid *Elizabeth*, for their lives—Remaider to the firſt heir male of their bodies—Remainder to ſecond heir male *&c.*—Remainder to the right heirs of *Thomas*—That ſaid *T. B.* and *Elizabeth* married—That *T. B.* died without iſſue—That *Elizabeth* ſurvived, and was ſeiſed for her life—The expectant reverſion

verſion to the right heirs of *T. B.*—That *W. B.* his brother, made his will—That ſaid *W. B.* died—That 1ſt *December*, 32 *Car.* 2. ſaid *Elizabeth* died—That on 10th *December*, 32 *Car.* 2. defendant *E. B.* entered as heir to ſaid *T. B.*—That the ſaid manor and tenements are ancient demeſne, held of the manor of *Aylesford*—That defendant being ſeiſed, it is recorded amongſt the pleas at *Weſtminſter* of *Trin.* 33 *Car.* 2. in the *Common Pleas*—That defendant was attached in writ of diſceit to anſwer to the ſaid *Thomas Colepeppyre*, lord of the manor of *Aylesford*, to reverſe a common recovery—The declaration on the writ of diſceit—The judgment for the plaintiff in the writ of diſceit—Defendant amerced—It is further found that the ſaid *Elizabeth*, relict of the ſaid *W. B.* entered 1ſt of *April*, 34 *Car.* 2. and on the 7th leaſed the premiſes to leſſor of the plaintiff for five years, and that *Eliz.* is now alive—The caſe—Verdict in ejectment by not informed in original Page 192—223

Verdict as to part for plaintiff—As to another part not guilty—As to another part a ſpecial verdict, that one *E. C.* the

the elder was ſeiſed in fee of copyhold lands of the manor of *T.*—That he had three ſons, *viz. Robert*, *Edmund*, and *John*, and three daughters, *Ciceley*, *Ellen*, and *Alice*—That on the 5th *October*, 1659, he ſurrendered to the uſe of his will—The will of *E. C.*—That teſtator died on the firſt of *Auguſt*, 1668—That ſaid *E. C.* the ſon, was admitted to the reverſion deviſed to him upon producing the will at the court of the manor on the 8th of *May*, 24 *Car.* 2, and ſaid *Edmund* ſurrendered to the uſe of his will—The will—That *Edmund* died 1 *June*, 1674, and that the ſiſters, on the firſt of *Auguſt*, 1675, died without iſſue. Firſt of *September*, *Anne*, the mother, died—That the ſaid *J. C.* brother of *Edmund*, on producing his brother's will, was admitted—That ſaid *J. C.* 26th *February*, 1682, made a letter of attorney, *&c.* to one *J. C.* a cuſtomary tenant, *&c.* to ſurrender to the uſe of *John Ladd*, and his heirs, on condition to be void upon payment of 106 *l.* 27th *February*, 1683—That 4th *March* the attorney ſurrendered accordingly—That *J. C.* died 20th *February*, firſt of *James* the ſecond, with-

without iſſue, and *R. C.* died at the ſame time—That afterwards, on the 12th *May*, firſt of *James* the ſecond, *John Ladd* came into court, and was admitted, *&c.*—That the leſſors of the couſins are heirs to the ſaid *E. C.* the ſon, and of *J. C.* and of the ſaid *Cicely*, *Ellen*, and *Alice*, and ſheweth how Page 224—237

Caſe *Ibid.*

Special verdict—That the tenements in queſtion are copyhold lands of the manor of *Sweffling Campſey*—That *Henry Warner*, and *Elizabeth*, his wife, were ſeiſed in right of *Elizabeth*, for her life—Remainder to *John Ballett*, in fee—That within the manor there is a cuſtom, that if any ſurrender be preſented at the next court, that the firſt proclamation ſhall be that the perſon who hath a right ſhall come and pray to be admitted, *&c.*—and if he will not, then a ſecond, and ſo a third, and if he will not come on the third proclamation, then the ſteward of the court is to command the bailiff to ſeize the premiſes to the uſe of the lord—That the ſaid *H. Warner* and *Elizabeth*, and *John Ballett*, 6th *April*, 34 *Car.*

Car. 2. ſurrendered out of court into the hands of the leſſor of the plaintiff, ſhe being the lady of the manor—To the uſe of *Robert Freeman*, and his heirs —That *Robert Freeman* died before any court, and *John Freeman* was his ſon and heir, and within age—That the ſurrender was preſented at the next court 8th *Sept.* 34 *Car.* 2—That the firſt proclamation was made at the ſame court, and that no perſon came, ſo at ſecond, third, *&c.* whereupon the premiſes were ſeized by the bailiffs for the uſe of the leſſor of the plaintiff, and that ſhe entered for the forfeiture Page 239—247

The caſe *Ibid.*

Special verdict—That *Thomas Andrews* was ſeiſed in fee 14th *February*, 14th of *James* the firſt, and by indenture conveyed the premiſes—To the uſe of himſelf and *Eleanor*, his wife, for life, remainder to *Mary Andrews*, his daughter, and the heirs of her body, begotten by one *John Gwillim* the younger, remainder to ſaid *Mary Andrews*, the daughter, in general tail Remainmainder to *Elizabeth Tomkins*, another daughter, in general tail, remainder to *William Tomkins*, the eldeſt ſon of the

the ſaid *Elizabeth*, in general tail, remainder to *John Tomkins*, another ſon of the ſaid *Elizabeth*, in general tail, remainder to the right heirs of *Thomas Andrews*—That *J. Gwillim* the younger married the ſaid *Mary Andrews*, and had iſſue *Thomas Gwillim*, that afterwards, and before 29th *May*, 1646, the ſaid *Thomas Andrews* and his wife died, and the ſaid *John Gwillim* and *Mary* his wife entered—That afterwards, and before the ſaid 29th of *May*, *John Gwillim* and his wife died, whereby the ſaid *Thomas Gwillim*, their eldeſt ſon, entered, and had iſſue *Thomas*, who entered, *&c.*—That the tenements are held of the manor of *Wormlow*, which is ancient demeſne, and pleadable by writ of right cloſe before the ſteward, *&c*, of the manor —That fines are levied in that court—That 29th *May*, 1646, a fine *ſur conceſſit* was levied of the premiſes by *Thomas Gwillim*, the father, and his wife, according to the cuſtom, *&c.* whereby *Thomas Gwillim*, the father, granted to *William Nurſe*, and *Sarah*, his wife, and *John Nurſe*, their ſon, for their lives, reſerving an annual rent of 6 *l.*—

The

The fine—That the premiſes at the time of the fine were not uſually demiſeable, nor was the rent reſerved ancient rent—That the conuſees entered—That *T. G.* the father, being ſeiſed of the reverſion, he and his wife levied another fine of the premiſes 2 *January*, 24 *Car.* 2. to *T. Marrett* and his heirs—The fine—That the laſt fine was levied to the uſe of *T. G.* the father; that *T. G.* the father, 1 *November*, 24 *Car.* 1. by an indenture inrolled, conveyed the premiſes to *T. Payne* and his heirs—The inrolment of the indenture before the juſtices of peace—That *Thomas Gwillim*, the father, 19th of *November*, 1649, releaſed all his right to the ſaid *Thomas Payne* (being ſeiſed, *&c.*) and to his heirs—The releaſe—That *Thomas Gwillim*, the father, died twentieth of *June*, 1663.—That *Thomas Gwillim* the younger, within age, was his ſon and heir, and had iſſue the leſſor of the premiſes—That the leſſor, *&c.* was alſo heir of the body of the ſaid *Mary Andrews*—That ſaid *Thomas Payne* died twentieth of *September*, 1661, and his reverſion deſcended to *John Payne*, his ſon and heir—That twenty-eighth *December*, 1680, *John* died, with-

out iſſue, and the reverſion deſcended to the defendant's wives, as coheirs of the ſaid *John*—That *Thomas Payne* and his heirs received the annual rent, *&c.*—That the ſurvivor of the three leſſees died ſeventeenth *September*, 1693. —That thereupon the defendants entered, and the leſſor, being within age, entered upon them, *&c.*—Concluſion Page 248

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